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Bill 46

An Act to establish a Commercial Concentration Tax

The Hon. B. Grandmaître
Minister of Revenue



1st Reading July 10th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to implement the proposal contained in the Treasurer's Budget of May 17, 1989, that large commercial structures and commercial parking lots and parking garages within the Greater Toronto Area be subject to a commercial concentration tax. The principal features of the Bill are as follows:

1. Effective January 1, 1990, an annual tax will be imposed on commercial property within the Greater Toronto Area, which consists of the regional municipalities of Durham, Halton, Peel, York and Metropolitan Toronto, at a rate equal to \$10.75 for each square metre by which the gross area exceeds 18,600 square metres. Commercial parking lots and garages within the same area will be taxed at \$10.75 per square metre.
2. Commercial property includes service stations, garages, stores, shopping centres, offices, office buildings, restaurants, hotels, theatres, cinemas, arenas and assembly halls. The Minister may prescribe additional categories of commercial property.
3. Exemptions are provided for residential and industrial property and for race tracks, pipelines, trucking depots, warehouses and research and development facilities. Land that is exempt from tax for municipal and school purposes is also exempt except for commercial parking lots operated by a municipality or local board.
4. Parking lots and garages are taxable only if they are accessible to the public and a fee is charged. Parking lots operated only on a seasonal basis are exempt.
5. Notices of assessment showing the gross area upon which tax will be calculated are delivered to all owners. A method for disputing the assessment is provided.
6. Tax bills are sent to all owners annually and the tax is payable in semi-annual instalments.
7. Relief from tax is available if a structure is converted to an exempt use or is razed or substantially damaged by fire or demolition.
8. Administrative provisions relating to access to property for the purpose of assessment, requests for information and the recovery of unpaid tax are similar to those contained in other statutes administered by the Minister of Revenue.

Bill 46

1989

An Act to establish a Commercial Concentration Tax

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“assessment” means the determination of the gross area of a commercial property or commercial parking lot that is subject to tax under this Act;

“Assessment Review Board” means the Assessment Review Board under the *Assessment Review Board Act*;

R.S.O. 1980,
c. 32

“commercial parking lot” means land used for the parking of vehicles that is accessible to the public and for which a fee is charged;

“commercial property” means land that is a service station, garage, store, shopping centre, office, office building, restaurant, transient accommodation, theatre, cinema, arena, assembly hall or any other classes of land that the Minister may prescribe, or any combination thereof;

“Greater Toronto Area” means the regional municipalities of Durham, Halton, Peel and York and The Municipality of Metropolitan Toronto;

“industrial property” means land used for the assembling, processing or manufacturing of finished or partially finished products from raw materials or fabricated parts;

“land” includes all buildings, or any part of a building, and all structures and fixtures erected or placed upon, in, over, under or affixed to the land;

“Minister” means the Minister of Revenue;

“person” includes a partnership, a municipal corporation, including a district, metropolitan or regional municipal cor-

R.S.O. 1980,
c. 303

poration or a local board as defined in the *Municipal Affairs Act*, and any board, commission or authority established under any Act of the Legislature;

“prescribed” means prescribed by regulations made under this Act;

“race track” means land where horse racing is carried on;

“tax” includes interest and penalties;

“taxable commercial property” means a commercial property that is liable for taxation under this Act;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

“trucking depot” means land where commercial vehicles are stationed and from which they are dispatched;

“warehouse” means land that is used as a repository, storehouse or shed for the storage of goods and includes any building or structure from which goods are distributed for sale off the premises, but does not include a building or structure, the primary purpose of which is the sale of goods to the public.

Taxable
commercial
property

2.—(1) Commercial property is liable to taxation under this Act if the gross area of the commercial property exceeds 18,600 square metres as determined under this section.

Buildings

(2) In respect of commercial property, the gross area is the sum of the areas measured from the outside of the outside walls of any building, part of a building or structure at each level, both above and below ground, excluding any part of a building or structure that is used for vehicle parking.

Parking lots

(3) In respect of a commercial parking lot, the gross area is the sum of the areas measured from the outside of the outside walls of any building, part of a building or structure at each level, both above and below ground, and any other land used exclusively in connection with or for the purpose of the commercial parking lot.

Condominiums
R.S.O. 1980,
c. 84

(4) In the case of a commercial property that is divided into units or proposed units, within the meaning of the *Condominium Act*, the gross area is the aggregate of the area of the units or proposed units plus the area of any common elements, within the meaning of the *Condominium Act*, that are commercial property.

(5) If a single commercial property contains two or more buildings that are not dependent on shared facilities, each building shall be separately assessed. Multiple buildings

(6) If a commercial property is located on more than one parcel of land, the gross area of that commercial property is, Multiple parcels of land

(a) the gross area determined under subsection (2) if it consists of a single building; or

(b) the aggregate gross areas if two or more buildings are dependent on shared facilities.

(7) Subsection (6) applies even if the parcels of land have different owners who are separately liable for their proportionate share of taxes under this Act. Idem

(8) If a parcel of land comprises commercial property and land that is exempt from tax under this Act, the gross area of the land that is exempt shall not be included in the calculation of the gross area used in determining whether the parcel is a taxable commercial property. Mixed use

(9) If a commercial property contains an atrium, the gross area of the land used in determining whether the land is a taxable commercial property shall be reduced by the sum of the areas of the atrium at each level surrounding the atrium and no tax is payable under this Act in respect of the atrium, but no reduction in the gross area or in the tax payable shall be made for the floor of the atrium. Atria

3.—(1) Land located within the Greater Toronto Area that is a taxable commercial property is liable to taxation in each year at a rate equal to \$10.75 for each square metre by which the gross area of the land exceeds 18,600 square metres. Tax on commercial property

(2) Land located within the Greater Toronto Area that is a commercial parking lot is liable to taxation in each year at a rate equal to \$10.75 for each square metre of the gross area of the land. Commercial parking lot

(3) Commercial property located within the Greater Toronto Area that is a unit, a proposed unit or the common elements, within the meaning of the *Condominium Act*, and that is part of a taxable commercial property is liable to taxation in each year for that portion of the tax otherwise imposed on such taxable commercial property that the area of the unit or common elements bears to the area of the taxable commercial property. Condominium
R.S.O. 1980, c. 84

Liability for
tax

R.S.O. 1980,
c. 84

(4) The tax under this section is payable to Her Majesty in right of Ontario by the owner of the land but, if the land is the common elements within the meaning of the *Condominium Act*, the tax is payable,

- (a) by the declarant, within the meaning of the *Condominium Act*, if the registration of a declaration and description has not occurred; or
- (b) by the corporation created under the *Condominium Act*, if the registration of the declaration and description has occurred.

Parking on
Crown land

(5) Despite subsection 4 (3), a tenant who operates a commercial parking lot on land within the Greater Toronto Area that is owned by the Crown or in which the Crown has an interest, if rent or other valuable consideration is paid in respect of the land, shall be assessed in respect of that land and shall pay taxes under this Act as if the land were owned by the tenant.

Exemptions

4.—(1) Land that is residential or industrial property, or that is a race track, pipeline, trucking depot or warehouse is exempt from tax under this Act.

Idem

(2) Land that is a research and development facility is exempt from tax under this Act.

Idem

R.S.O. 1980,
c. 303

(3) Land that is exempt from taxes for municipal and school purposes by any other Act is exempt from tax under this Act, other than a commercial parking lot operated by a municipality or local board as defined in the *Municipal Affairs Act*.

Commercial
parking lots

(4) Land that is a commercial parking lot is exempt from tax under this Act if it is operated as a commercial parking lot on a seasonal basis.

Assessors

5.—(1) The Minister may authorize persons to carry out assessments for the purpose of this Act.

Right of
access

(2) An assessor authorized under subsection (1), upon producing proper identification, shall at all reasonable times and upon reasonable request be given free access to all land.

Information

(3) Every adult person present on land when an assessor visits the land in the performance of his or her duties shall, upon request, give to the assessor all the information in his or her knowledge that will assist in a proper assessment.

(4) The Minister is not bound by any information provided under subsection (3) and the Minister may make inquiries to ascertain its correctness.

Minister not bound by information

6.—(1) Every person who refuses to provide information as requested under subsection 5 (3) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 and to an additional fine of \$100 for each day during which the offence continues.

Offence for failure to provide information

(2) Every person who knowingly makes a false statement in providing information under subsection 5 (3) is guilty of an offence and on conviction is liable to a fine of not more than \$500.

Offence, false statement

(3) Every person who wilfully obstructs or interferes with an assessor in the performance of his or her duties or the exercise of his or her powers under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500.

Offence, obstruction

7.—(1) The Minister shall record the name and address of every owner of land that is liable to tax under this Act, a description of the land sufficient to identify it and the gross area of the land upon which tax will be calculated.

Assessment information

(2) The Minister shall maintain a register of all land assessed under this Act and the register shall be open for public inspection during normal office hours.

Register

(3) Subject to section 2, each subdivision shall be assessed separately.

Subdivisions assessed separately

8.—(1) Not later than the second Tuesday following the 1st day of October in each year, the Minister shall assess and deliver to every owner of land, subject to tax under this Act, a notice of assessment in the prescribed form of the gross area of each taxable commercial property or commercial parking lot assessed.

Notice of assessment

(2) In any proceeding, a certificate of the Minister setting out the dates upon which notices were delivered is, in the absence of evidence to the contrary, proof of the delivery of the notice.

Idem

(3) If land is owned by more than one person, the Minister shall deliver a notice of assessment to each owner.

Idem

(4) If in any year it appears that the notices of assessment will not be or have not been delivered as provided in sub-

Extension of time for notice of assessment

section (1), the Minister may extend the time for delivering the notices.

Notice of extension

(5) The Minister shall cause a notice of extension to be published in a daily newspaper that, in the opinion of the Minister, has such circulation within the Greater Toronto Area as to provide reasonable notice to persons affected by it.

Contents of notice

(6) The notice of extension shall specify the date to which the time has been extended and the final date for commencing an appeal to the Assessment Review Board.

Assessment valid and binding

(7) The assessment is, subject to subsections 15 (2) and (3), valid and binds all parties concerned, despite any defect or error in the assessment or in the notice required by this section or the omission to deliver the notice.

Delivery of notices

(8) The notice of assessment shall be delivered by leaving it at or mailing it to the residence or place of business of the person liable to pay tax.

Delivery to requested address

(9) If a person liable to pay tax submits a written notice to the Minister requesting that the notice of assessment be delivered to a particular address, the notice of assessment shall be delivered to that address and the notice stands until revoked.

Correction of errors

(10) The Minister may, before the fifteenth day following the day on which notices of assessment are delivered or the date to which the delivery of assessment notices is extended under subsection (4), correct any defect, error or omission in any assessment and shall deliver an amended notice to the person assessed.

Omission

9.—(1) If any taxable commercial property or commercial parking lot has not been assessed in whole or in part for the current year or for any part of either of the next two preceding years, and no taxes have been imposed for the assessment omitted, the Minister shall make any assessment necessary to rectify the omission and such taxes as would have been payable if the assessment had been made shall be imposed and collected.

Supplementary assessments

(2) If, after assessment notices have been given under subsection 8 (1) and before the last day of the taxation year for which taxes are imposed on the assessment referred to in the notices,

- (a) an increase in the gross area results from the erection, alteration, enlargement or improvement of any land or a portion thereof that commences to be

used as a commercial property or a commercial parking lot; or

- (b) land or a portion thereof ceases to be exempt from taxation,

the Minister shall make such supplementary assessment as may be necessary to reflect the change.

(3) If a supplementary assessment has been made, the amount of taxes to be imposed shall be the amount of taxes that would have been imposed for the portion of the taxation year remaining after the change occurred if the assessment had been made in the usual way. Idem

(4) Notice that an assessment under subsection 8 (10) or under subsection (1) or (2) has been made shall be given to the owner of the land who is entitled to appeal as if the assessment had been regularly made. Notice and appeal

10.—(1) Any person who is assessed under this Act may complain in writing to the Assessment Review Board that the assessment is too high. Complaint to Assessment Review Board

(2) A complaint shall state the name and address where notices can be given to the complainant and shall be delivered or mailed to the regional registrar of the Assessment Review Board within thirty-five days following the day on which notices of assessment are delivered or the date to which the delivery of assessment notices is extended under subsection 8 (4). Time for making complaint

(3) The regional registrar shall promptly transmit a copy of all complaints received to the Minister. Copy to Minister

(4) The parties to the proceedings are the Minister and all persons complaining. Parties

(5) The regional registrar shall give at least fourteen days notice to the parties of any hearing by the Assessment Review Board. Notice of hearing

(6) If during the hearing it appears that another person should be a party to the hearing, the Board shall add the person as a party and, if necessary, adjourn and give the person notice of the hearing. Adding parties

(7) A copy of the assessment, certified to be a true copy by the Minister, is admissible in evidence in any proceeding without proof of the signature or the production of the original Copy of assessment

assessment and, in the absence of evidence to the contrary, is proof of the contents of the original.

Preliminary
explanation

(8) At the commencement of a hearing respecting the determination of the gross area of a commercial property or a commercial parking lot, the assessor shall explain the manner in which the assessment was arrived at and the complainant shall explain the nature of his or her complaint.

Alteration of
assessment

(9) The decision of the Assessment Review Board shall be forwarded by the regional registrar to the Minister and the Minister shall alter the assessment in accordance with the decision if no appeal is taken.

Appeal to
O.M.B.

11.—(1) An appeal lies to the Ontario Municipal Board from the decision of the Assessment Review Board under section 10.

Notice of
appeal

(2) The party appealing shall, within twenty-one days of the mailing of the decision of the Assessment Review Board, deliver or mail to the regional registrar of the Assessment Review Board a notice of appeal accompanied by the fee prescribed under the *Ontario Municipal Board Act*.

R.S.O. 1980,
c. 347

Delivery of
notice of
appeal

(3) The regional registrar of the Assessment Review Board shall promptly deliver or mail a copy of the notice of appeal to the other parties.

Material to
be forwarded
to O.M.B.

(4) The regional registrar shall forward to the Ontario Municipal Board the notice of appeal, the fee mentioned in subsection (2) and any other material in the regional registrar's possession that is necessary for the hearing of the appeal.

New hearing

(5) The appeal shall be by way of a new hearing.

Alteration

(6) If, on the basis of a decision of the Ontario Municipal Board or on an appeal therefrom, it appears that an alteration should be made in an assessment, the Minister shall, except where an appeal is commenced, alter the assessment to give effect to the decision.

Application
to court

12.—(1) The Minister or any person assessed may apply to the Supreme Court or to the district court of the district in which the land is situate for the determination of any question relating to the assessment, except a question as to whether the assessment is too high.

Service of
notice

(2) The persons to be served with notice under this section are the persons assessed and the Minister.

(3) An appeal lies to the Divisional Court from the judgment of the Supreme Court or the district court.

Appeal to Divisional Court

(4) The appeal from any judgment given by the Supreme Court or by a district court under this section shall not cause the assessment to be amended, but when such appeal has been disposed of, the Minister shall cause changes to be made in the assessment to give effect to the final determination.

When assessment to be changed

(5) The judgment of the Supreme Court, the district court or the Divisional Court is binding upon the Assessment Review Board and the Ontario Municipal Board.

Judgment of court binding on Assessment Review Board, etc.

(6) A proceeding may be brought under this section at any time but the court may only alter an assessment to affect taxes imposed and payable with respect to that assessment in the year in which the proceeding is commenced and any subsequent year.

Time for proceeding

13. No matter that could have been raised by way of complaint to the Assessment Review Board or in a proceeding with respect to an assessment in a court within the times limited for bringing that complaint or proceeding under this Act shall be raised by way of defence in any action or other proceeding brought to collect the taxes.

Defence limited in actions to collect tax

14.—(1) Taxes shall be imposed in each year on the assessment made in the previous year.

Basis of taxation

(2) Nothing in this section deprives a person of any right of appeal provided for in this Act.

Rights of appeal preserved

(3) If the final determination of complaints, appeals or other proceedings increases or reduces an assessment, the taxes levied and payable with respect to the assessment shall be adjusted accordingly and,

Idem

- (a) any overpayment resulting from the adjustment shall be refunded by the Minister; or
- (b) any underpayment resulting from the adjustment shall be remitted to the Minister.

15.—(1) The tax imposed under this Act shall be for the calendar year and becomes due and payable in two equal instalments on the 1st day of February and the 1st day of October in the year in which it is imposed and the Minister shall deliver a tax bill to every owner of land subject to tax on

Tax bills

or before the 1st day of January in the year in which the tax is payable.

Delivery

(2) A tax bill shall be delivered in the same manner and to the same address as a notice of assessment under section 8.

Notice of
address

(3) Despite subsection (2), if after the delivery of a notice of assessment and before the delivery of a tax bill under this section, an owner of land subject to tax submits a written notice to the Minister requesting that the tax bill be delivered to a particular address, the tax bill shall be delivered to that address and the notice stands until revoked.

Content of
tax bill

(4) The tax bill shall show the assessment of the land, the rate of taxation, the amount of tax payable and such other information as may be prescribed.

Tax where
assessment
omitted

(5) If for the current year or for any part of either or both of the two preceding years, any taxable commercial property or commercial parking lot has been in whole or in part omitted from assessment and no taxes have been imposed for the assessment omitted, the Minister may deliver to the owner a tax bill for such tax.

Idem

(6) If the tax bill covers a portion of a year, the Minister may deliver to the owner a tax bill for a proportion of the amount of the taxes that would have been payable under this Act for the year if the land omitted from assessment had been liable to assessment and taxation for the whole year, in the ratio that the number of full months remaining in the year after the land becomes liable to assessment and taxation bears to the number 12.

Tax on
supple-
mentary
assessment

(7) If, between the 1st day of January and the 30th day of November in any year, land becomes liable to assessment and taxation under this Act for a reason described in clause 9 (2) (a) or (b), the Minister may deliver to the owner a tax bill for a proportion of the amount of the taxes that would have been payable under this Act for the year, if the land had been liable to assessment and taxation for the whole year, in the ratio that the number of full months remaining in the year after the land becomes liable to assessment and taxation bears to the number 12.

Second
instalment

(8) When a tax bill is issued under this section, the tax billed is due and payable within thirty days of the date of that bill, but if a tax bill is issued before the 1st day of September in a year, the second instalment of tax payable with respect to the current year is payable on the 1st day of October in that year.

(9) Owners of land are jointly and severally liable for the payment of tax under this Act. Liability for payment of tax

(10) The penalty for late payment of any instalment of tax payable under subsection (1) is an amount equal to 5 per cent of the tax payable up to a maximum of \$10,000. Penalty for late payment

(11) Tax billed under this section or under subsection 16 (16) bears interest, at the rate prescribed, from the day on which such amount should have been paid to the day of payment. Interest on unpaid tax

16.—(1) An owner of land may apply to the Minister for the cancellation, reduction or refund of taxes imposed in the year in respect of which the application is made, or for any part of either or both of the two preceding years, if, Cancellation, reduction, refund of taxes

- (a) the land has become exempt from taxation during the year or during the preceding year after the delivery of assessment notices;
- (b) during the year or during the preceding year after the delivery of assessment notices the land was razed by fire or demolition or was damaged by fire or demolition so as to render it substantially unusable as a commercial property or as a commercial parking lot; or
- (c) the owner has been overcharged by reason of a clerical error, the transposition of figures, a typographical error or similar type of error, but not an error in judgment in making the assessment upon which the taxes have been calculated.

(2) If an owner who is entitled to apply for the cancellation, reduction or refund of taxes under clause (1) (c) fails to apply, the Minister may apply in his or her stead and this section applies with necessary modifications to that application. Idem

(3) An application under subsection (1) may be made at any time during the year in respect of which the application is made and until the 28th day of February in the following year. Time for making application

(4) The Minister shall with all due dispatch consider the application and may, Powers of Minister

- (a) reject the application;
- (b) if the taxes have not been paid, cancel the taxes or reduce the taxes;

(c) if the taxes have been paid in full, order a refund of the taxes or any part thereof; or

(d) if the taxes have been paid in part, order a refund of the taxes paid or any part thereof and reduce or cancel the portion of the taxes unpaid.

Notice of
decision

(5) The Minister shall, by ordinary mail or by personal service, give the applicant notice of the decision respecting the application together with written reasons therefor.

Proportionate
cancellation,
reduction or
refund

(6) A cancellation, reduction or refund under clause (1) (a) shall be for a proportionate part of the taxes based on the number of months in the year during which the exemption existed.

Idem

(7) A cancellation, reduction or refund under clause (1) (b) shall be for a proportionate part of the taxes based on the number of months in the year.

Objection

(8) Where an applicant objects to a notice given under subsection (5), (15) or (18), the applicant may, within sixty days from the date of mailing or personal service of the notice, serve on the Minister, by registered mail addressed to the Minister, a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

Acceptance
of notice

(9) The Minister may accept a notice of objection even if it is not served in the manner required.

Reconsid-
eration

(10) Upon receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the decision objected to, and the Minister shall promptly notify the applicant of his or her decision by registered mail.

Where
decision final

(11) A decision of the Minister under subsection (10) is final and is not subject to appeal unless the decision involves the interpretation of a provision of this Act or involves an issue solely of law.

Resolution of
question

(12) In any dispute over a decision of the Minister under subsection (10), the Minister may, where the dispute involves the interpretation of a provision of this Act or involves an issue solely of law in which no facts are in dispute or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the applicant as to the undisputed facts and apply to the Divisional Court to have the issue in dispute determined.

(13) If the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the applicant may apply to the court to have the issue determined. Idem

(14) If the Minister has made a decision in any year under subsection (4) to cancel, refund or reduce taxes for that year in respect of land mentioned in clause (1) (b) and the Minister is subsequently satisfied that the land has been reconstructed or repaired and has been returned to use before the end of that year, the Minister may direct that such portion as the Minister considers appropriate of the tax reduction, or of the taxes that were cancelled or refunded, be restored as taxes owing for that year. Restoration of taxes

(15) A direction under subsection (14) may be made at any time up to the 28th day of February of the immediately following year and the Minister shall, by ordinary mail or by personal service, give the applicant notice of the direction together with written reasons therefor. Direction

(16) The Minister shall bill the owner of land for taxes restored under subsection (14) and the tax billed is due and payable within thirty days of the date of the bill but, if a tax bill is issued before the 1st day of September in a year, the second instalment of tax payable with respect to the current year is payable on the 1st day of October in accordance with subsection 15 (1). Payment

(17) If a person has paid an amount under this Act as tax and that amount is not payable as tax under this Act, such amount shall be refunded if, within three years following the date of its payment, an application for refund is made to the Minister and it is established to the satisfaction of the Minister that the amount was not payable as tax under this Act. Refund of tax

(18) The Minister shall notify the applicant of his or her decision by ordinary mail or by personal service. Notice

(19) Only one application under subsection (17) may be made with respect to any amount paid as tax under this Act. One application

(20) If an overpayment arises as a result of the cancellation, reduction or refund by the Minister of taxes that have been paid, interest at the rate prescribed shall be paid from the date the overpayment arose to the date of refund, unless the amount of interest is less than \$1, in which case no interest shall be paid. Interest

Lien upon
real property

17.—(1) All taxes imposed under this Act are, upon registration by the Minister in the proper land registry office of a notice claiming the first lien and charge conferred by this section, a first lien and charge upon the land liable to the taxes.

Amounts
included and
priority

(2) The first lien and charge conferred by subsection (1) is in respect of all taxes that are payable at the time of registration of the notices and all taxes that become payable thereafter while the notice remains registered, and such first lien and charge has priority over all encumbrances or claims registered or attaching to the subject property subsequent to the registration of the notice.

Recovery of
tax

18.—(1) Upon default of payment of any tax payable under this Act,

- (a) the Minister may bring an action for recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought in the name of the Minister or in the name of his or her office and may be continued by the Minister's successor in office as if no change had occurred and shall be tried without a jury; or
- (b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment under this Act is located for the amount owed by that person, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff.

Effect of
warrant

(2) A warrant issued under clause (1) (b) has the same effect as a writ of execution issued out of the Supreme Court.

Security for
tax

(3) If the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory.

Garnishment

19.—(1) If the Minister has knowledge or suspects that within ninety days a person is or is about to become indebted or liable to make a payment to a person liable to make a payment under this Act, the Minister may by registered letter or by letter served personally, require the first-named person to pay the money otherwise payable to the second-named person in whole or in part to the Treasurer immediately on account of the liability under this Act and the requirement shall apply to all money that would otherwise be so paid in the ninety days next following the receipt of the letter.

(2) Despite subsection (1), if the Minister has knowledge or suspects that within ninety days, Idem

- (a) a bank, credit union, trust company or other similar institution is about to loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a person liable to make a payment under this Act, who is indebted to the institution; or
- (b) a person, other than an institution, is about to loan or advance money to or make a payment on behalf of, a person who is liable to make a payment under this Act and who,
 - (i) is employed by or engaged in providing goods or services to the first-named person and who was, or will within ninety days be, so employed or so engaged, or
 - (ii) is not dealing at arm's length with the first-named person,

the Minister may, by registered letter, or by letter served personally, require the institution or person to pay immediately to the Treasurer, on account of the liability of the person liable to make a payment under this Act, all or part of the money that would otherwise have been loaned, advanced or paid, and any money paid to the Treasurer shall be deemed to have been loaned, advanced or paid to the person liable to make a payment under this Act.

(3) If the Minister has required a person to pay to the Treasurer money otherwise payable as interest, rent, remuneration, a dividend, an annuity payment or other periodic payment to a person who is liable to make a payment under this Act,

Continuing
effect of
requisition

- (a) the requirement applies to all periodic payments to be made by the first-named person to the second-named person after the date of receipt of the Minister's letter until the liability of the second-named person is satisfied; and
- (b) the payments required to be paid to the Treasurer shall be the full amount of each payment or in such lesser amount as the Minister may designate in the Minister's letter.

Idem (4) The receipt of the Treasurer for money paid as required under this section is sufficient discharge of the original liability to the extent of the payment.

Liability of debtor (5) Every person who has discharged any liability to a person liable to make a payment under this Act without complying with the requirement under this section is liable to pay to Her Majesty in right of Ontario the lesser of an amount equal to the liability discharged and the amount that person was required to pay to the Treasurer under this section.

Idem (6) Every institution that fails to comply with a requirement under subsection (2) is liable to pay to Her Majesty in right of Ontario an amount equal to the lesser of,

(a) the aggregate of the money advanced or paid; and

(b) the amount that it was required under subsection (2) to pay the Treasurer.

Service (7) If a person who is or is about to become indebted or liable to make a payment to a person liable to payment under this Act carries on business under a name or style other than his or her own name, the registered letter under subsection (1) may be addressed to the name or style under which he or she carries on business and, in the case of personal service, it shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

Idem (8) If the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment under this Act carry on business as a partnership, a letter under subsection (1) may be addressed to the partnership name and, in the case of personal service, it shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

R.S.O. 1980,
c. 526
applies (9) This section is subject to the *Wages Act*.

Failure to remit (10) If any person, without reasonable excuse, has failed to remit to the Treasurer the money as required under this section, the Minister may apply before a judge of the Supreme Court for an order directing that person to remit the money.

Remedies for recovery of tax **20.**—(1) The use of any of the remedies under sections 17, 18 and 19 does not bar or affect the use of any other remedy under those sections or other remedy existing at law.

(2) No proceeding taken under section 17, 18 or 19 limits or affects any lien, charge or priority existing under this Act or otherwise. Limitation

(3) In any proceeding taken under this Act, the facts necessary to establish the compliance of the Minister with this Act and the lack of compliance by any person with this Act shall, in the absence of evidence to the contrary, be sufficiently proved by affidavit of the Minister or any officer of the Ministry of Revenue. Compliance to be proved by affidavit

21.—(1) The Lieutenant Governor in Council may make regulations, Regulations

- (a) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;
- (b) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (c) prescribing the rate of interest payable under this Act or the regulations, or a formula for computing that rate, and the method of calculating that interest;
- (d) providing for the rebate of tax in whole or in part owing to special circumstances, and prescribing the conditions under which the rebates may be made and the payment of interest to persons to whom any rebate of tax is made;
- (e) providing for limiting the amount of tax payable under this Act in special circumstances where inconvenience or hardship might otherwise result.

(2) The Minister may make regulations,

Regulations
by Minister

- (a) prescribing any form that is required by this Act or the regulations or that will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it will contain;
- (b) prescribing additional classes of land to be included in the definition of “commercial property”.

Retroactivity (3) A regulation made under this Act is, if it so provides, effective with reference to a period before it was filed.

Commence-
ment **22.**—(1) This Act, except section 3, comes into force on the earlier of,

(a) the day on which it receives Royal Assent; and

(b) the 1st day of October, 1989.

Idem (2) Section 3 comes into force on the 1st day of January, 1990.

Short title **23.** The short title of this Act is the *Commercial Concentration Tax Act, 1989*.

Bill 46

An Act to establish a Commercial Concentration Tax

The Hon. R. Mancini
Minister of Revenue



1st Reading July 10th, 1989
2nd Reading October 30th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Finance and Economic Affairs Committee)

EXPLANATORY NOTES

The purpose of the Bill is to implement the proposal contained in the Treasurer's Budget of May 17, 1989, that large commercial structures and commercial parking lots and parking garages within the Greater Toronto Area be subject to a commercial concentration tax. The principal features of the Bill are as follows:

1. Effective January 1, 1990, an annual tax will be imposed on commercial property within the Greater Toronto Area, which consists of the regional municipalities of Durham, Halton, Peel, York and Metropolitan Toronto, at a rate equal to \$10.75 for each square metre by which the gross area exceeds 18,600 square metres. Commercial parking lots and garages within the same area will be taxed at \$10.75 per square metre.
2. Commercial property includes service stations, garages, stores, shopping centres, offices, office buildings, restaurants, hotels, theatres, cinemas, arenas and assembly halls. The Lieutenant Governor in Council may prescribe additional categories of commercial property.
3. Exemptions are provided for residential and industrial property and for race tracks, pipelines, trucking depots, warehouses and research and development facilities. Land that is exempt from tax for municipal and school purposes is also exempt except for commercial parking lots operated by a municipality or local board. The Lieutenant Governor in Council can exempt commercial properties and commercial parking lots.
4. Parking lots and garages are taxable only if they are accessible to the public and a fee is charged. Parking lots operated only on a seasonal basis are exempt.
5. Notices of assessment showing the gross area upon which tax will be calculated are delivered to all owners. A method for disputing the assessment is provided.
6. Tax bills are sent to all owners annually and the tax is payable in semi-annual instalments.
7. Relief from tax is available if a structure is converted to an exempt use or is razed or substantially damaged by fire or demolition.
8. Administrative provisions relating to access to property for the purpose of assessment, requests for information and the recovery of unpaid tax are similar to those contained in other statutes administered by the Minister of Revenue.

Bill 46

1989

An Act to establish a Commercial Concentration Tax

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“assessment” means the determination of the gross area of a commercial property or commercial parking lot that is subject to tax under this Act;

“Assessment Review Board” means the Assessment Review Board under the *Assessment Review Board Act*;

R.S.O. 1980,
c. 32

“commercial parking lot” means land used for the parking of vehicles that is accessible to the public and for which a fee is charged;

“commercial property” means land that is a service station, garage, store, shopping centre, office, office building, restaurant, transient accommodation, theatre, cinema, arena, assembly hall or any other classes of land that may be prescribed, or any combination thereof;

“Greater Toronto Area” means the regional municipalities of Durham, Halton, Peel and York and The Municipality of Metropolitan Toronto;

“industrial property” means land that is constructed to be used for the assembling, processing or manufacturing of finished or partially finished products from raw materials or fabricated parts;

“land” includes all buildings, or any part of a building, and all structures and fixtures erected or placed upon, in, over, under or affixed to the land;

“Minister” means the Minister of Revenue;

R.S.O. 1980,
c. 303

“person” includes a partnership, a municipal corporation, including a district, metropolitan or regional municipal corporation or a local board as defined in the *Municipal Affairs Act*, and any board, commission or authority established under any Act of the Legislature;

“prescribed” means prescribed by regulations made under this Act;

“race track” means land where horse racing is carried on;

“tax” includes interest and penalties;

“taxable commercial property” means a commercial property that is liable for taxation under this Act;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

“trucking depot” means land where commercial vehicles are stationed and from which they are dispatched;

“warehouse” means land that is used as a repository, storehouse or shed for the storage of goods and includes any building or structure from which goods are distributed for sale off the premises, but does not include a building or structure, the primary purpose of which is the sale of goods to the public.

Taxable
commercial
property

2.—(1) Commercial property is liable to taxation under this Act if the gross area of the commercial property exceeds 18,600 square metres as determined under this section.

Buildings

(2) In respect of commercial property, the gross area is the sum of the areas measured from the outside of the outside walls of any building, part of a building or structure at each level, both above and below ground, excluding any part of a building or structure that is used for vehicle parking.

Parking lots

(3) In respect of a commercial parking lot, the gross area is the sum of the areas measured from the outside of the outside walls of any building, part of a building or structure at each level, both above and below ground, and any other land used exclusively in connection with or for the purpose of the commercial parking lot.

Condominiums
R.S.O. 1980,
c. 84

(4) In the case of a commercial property that is divided into units or proposed units, within the meaning of the *Condominium Act*, the gross area is the aggregate of the area of the units or proposed units plus the area of any common ele-

ments, within the meaning of the *Condominium Act*, that are commercial property.

(5) If a single commercial property contains two or more buildings that are not dependent on shared facilities, each building shall be separately assessed. Multiple buildings

(6) If a commercial property is located on more than one parcel of land, the gross area of that commercial property is, Multiple parcels of land

(a) the gross area determined under subsection (2) if it consists of a single building; or

(b) the aggregate gross areas if two or more buildings are dependent on shared facilities.

(7) Subsection (6) applies even if the parcels of land have different owners who are separately liable for their proportionate share of taxes under this Act. Idem

(8) If a parcel of land comprises commercial property and land that is exempt from tax under this Act, the gross area of the land that is exempt shall not be included in the calculation of the gross area used in determining whether the parcel is a taxable commercial property. Mixed use

(9) If a commercial property contains an atrium, the gross area of the land used in determining whether the land is a taxable commercial property shall be reduced by the sum of the areas of the atrium at each level surrounding the atrium and no tax is payable under this Act in respect of the atrium, but no reduction in the gross area or in the tax payable shall be made for the floor of the atrium. Atria

3.—(1) Land located within the Greater Toronto Area that is a taxable commercial property is liable to taxation in each year at a rate equal to \$10.75 for each square metre by which the gross area of the land exceeds 18,600 square metres. Tax on commercial property

(2) Land located within the Greater Toronto Area that is a commercial parking lot is liable to taxation in each year at a rate equal to \$10.75 for each square metre of the gross area of the land. Commercial parking lot

(3) Commercial property located within the Greater Toronto Area that is a unit, a proposed unit or the common elements, within the meaning of the *Condominium Act*, and that is part of a taxable commercial property is liable to taxation in each year for that portion of the tax otherwise imposed Condominium

on such taxable commercial property that the area of the unit, proposed unit or common elements bears to the area of the taxable commercial property.

Multiple
parcels

➡ (4) Each owner of commercial property located within the Greater Toronto Area that is part of a taxable commercial property and that is situated on a separate parcel of land is liable to taxation in each year for that portion of the tax otherwise imposed on such taxable commercial property that the area of the commercial property bears to the area of the taxable commercial property. ⬆

Liability for
tax

R.S.O. 1980,
c. 84

(5) The tax under this section is payable to Her Majesty in right of Ontario by the owner of the land but, if the land is the common elements within the meaning of the *Condominium Act*, the tax is payable,

(a) by the declarant, within the meaning of the *Condominium Act*, if the registration of a declaration and description has not occurred; or

➡ (b) by the owners of the units in the same proportion as their interest in the common elements, if the registration of the declaration and description has occurred. ⬆

Parking on
Crown land

(6) Despite subsection 4 (3), a tenant who operates a commercial parking lot on land within the Greater Toronto Area that is owned by the Crown or in which the Crown has an interest, if rent or other valuable consideration is paid in respect of the land, shall be assessed in respect of that land and shall pay taxes under this Act as if the land were owned by the tenant.

Exemptions

4.—(1) Land that is residential or industrial property, or that is a race track, pipeline, trucking depot or warehouse is exempt from tax under this Act.

Idem

(2) Land that is a research and development facility is exempt from tax under this Act.

Idem

(3) Land that is exempt from taxes for municipal and school purposes by any other Act is exempt from tax under this Act, other than a commercial parking lot operated by a municipality or local board as defined in the *Municipal Affairs Act*.

R.S.O. 1980,
c. 303

Commercial
parking lots

(4) Land that is a commercial parking lot is exempt from tax under this Act if it is operated as a commercial parking lot on a seasonal basis.

5.—(1) The Minister may authorize persons to carry out assessments for the purpose of this Act.

Assessors

(2) An assessor authorized under subsection (1), upon producing proper identification, shall at all reasonable times and upon reasonable request be given free access to all land.

Right of access

(3) Every adult person present on land when an assessor visits the land in the performance of his or her duties shall, upon request, give to the assessor all the information in his or her knowledge that will assist in a proper assessment.

Information

(4) The Minister is not bound by any information provided under subsection (3) and the Minister may make inquiries to ascertain its correctness.

Minister not bound by information

6.—(1) Every person who refuses to provide information as requested under subsection 5 (3) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 and to an additional fine of \$100 for each day during which the offence continues.

Offence for failure to provide information

(2) Every person who knowingly makes a false statement in providing information under subsection 5 (3) is guilty of an offence and on conviction is liable to a fine of not more than \$500.

Offence, false statement

(3) Every person who wilfully obstructs or interferes with an assessor in the performance of his or her duties or the exercise of his or her powers under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500.

Offence, obstruction

7.—(1) The Minister shall record the name and address of every owner of land that is liable to tax under this Act, a description of the land sufficient to identify it and the gross area of the land upon which tax will be calculated.

Assessment information

(2) The Minister shall maintain a register of all owners of land assessed under this Act and the register shall be open for public inspection during normal office hours.

Register

(3) Subject to section 2, each subdivision shall be assessed separately.

Subdivisions assessed separately

8.—(1) Not later than the second Tuesday following the 1st day of October in each year, the Minister shall assess and deliver to every owner of land, subject to tax under this Act, a notice of assessment in the prescribed form of the gross area

Notice of assessment

of each taxable commercial property or commercial parking lot assessed.

Idem (2) In any proceeding, a certificate of the Minister setting out the dates upon which notices were delivered is, in the absence of evidence to the contrary, proof of the delivery of the notice.

Idem (3) If land is owned by more than one person, the Minister shall deliver a notice of assessment to each owner.

Extension of time for notice of assessment (4) If in any year it appears that the notices of assessment will not be or have not been delivered as provided in subsection (1), the Minister may extend the time for delivering the notices.

Notice of extension (5) The Minister shall cause a notice of extension to be published in a daily newspaper that, in the opinion of the Minister, has such circulation within the Greater Toronto Area as to provide reasonable notice to persons affected by it.

Contents of notice (6) The notice of extension shall specify the date to which the time has been extended and the final date for commencing an appeal to the Assessment Review Board.

Assessment valid and binding (7) The assessment is, subject to subsections 14 (2) and (3), valid and binds all parties concerned, despite any defect or error in the assessment or in the notice required by this section or the omission to deliver the notice.

Delivery of notices (8) The notice of assessment shall be delivered by leaving it at or mailing it to the residence or place of business of the person liable to pay tax.

Delivery to requested address (9) If a person liable to pay tax submits a written notice to the Minister requesting that the notice of assessment be delivered to a particular address, the notice of assessment shall be delivered to that address and the notice stands until revoked.

Correction of errors (10) The Minister may, before the fifteenth day following the day on which notices of assessment are delivered or the date to which the delivery of assessment notices is extended under subsection (4), correct any defect, error or omission in any assessment and shall deliver an amended notice to the person assessed.

Omission **9.—**(1) If any taxable commercial property or commercial parking lot has not been assessed in whole or in part for the current year or for any part of either of the next two preceding years, and no taxes have been imposed for the assessment

omitted, the Minister shall make any assessment necessary to rectify the omission and such taxes as would have been payable if the assessment had been made shall be imposed and collected.

(2) If, after assessment notices have been given under subsection 8 (1) and before the last day of the taxation year for which taxes are imposed on the assessment referred to in the notices,

Supplementary assessments

- (a) an increase in the gross area results from the erection, alteration, enlargement or improvement of any land or a portion thereof that commences to be used as a commercial property or a commercial parking lot; or
- (b) land or a portion thereof ceases to be exempt from taxation,

the Minister shall make such supplementary assessment as may be necessary to reflect the change.

(3) If a supplementary assessment has been made, the amount of taxes to be imposed shall be the amount of taxes that would have been imposed for the portion of the taxation year remaining after the change occurred if the assessment had been made in the usual way.

Idem

(4) Notice that an assessment under subsection 8 (10) or under subsection (1) or (2) has been made shall be given to the owner of the land who is entitled to appeal as if the assessment had been regularly made.

Notice and appeal

10.—(1) Any person who is assessed under this Act may complain in writing to the Assessment Review Board that the assessment is too high.

Complaint to Assessment Review Board

(2) A complaint shall state the name and address where notices can be given to the complainant and shall be delivered or mailed to the regional registrar of the Assessment Review Board within thirty-five days following the day on which notices of assessment are delivered or the date to which the delivery of assessment notices is extended under subsection 8 (4).

Time for making complaint

(3) The regional registrar shall promptly transmit a copy of all complaints received to the Minister.

Copy to Minister

(4) The parties to the proceedings are the Minister and all persons complaining.

Parties

Notice of
hearing

(5) The regional registrar shall give at least fourteen days notice to the parties of any hearing by the Assessment Review Board.

Adding
parties

(6) If during the hearing it appears that another person should be a party to the hearing, the Board shall add the person as a party and, if necessary, adjourn and give the person notice of the hearing.

Copy of
register
admissible

(7) A copy of the register under subsection 7 (1), certified to be a true copy by the Minister, is admissible in evidence in any proceeding as proof of the original assessment made against each owner recorded in the register and, in the absence of evidence to the contrary, is proof of the contents of the assessment.

Preliminary
explanation

(8) At the commencement of a hearing respecting the determination of the gross area of a commercial property or a commercial parking lot, the assessor shall explain the manner in which the assessment was arrived at and the complainant shall explain the nature of his or her complaint.

Alteration of
assessment

(9) The decision of the Assessment Review Board shall be forwarded by the regional registrar to the Minister and the Minister shall alter the assessment in accordance with the decision if no appeal is taken.

Appeal to
O.M.B.

11.—(1) An appeal lies to the Ontario Municipal Board from the decision of the Assessment Review Board under section 10.

Notice of
appeal

(2) The party appealing shall, within twenty-one days of the mailing of the decision of the Assessment Review Board, deliver or mail to the regional registrar of the Assessment Review Board a notice of appeal accompanied by the fee prescribed under the *Ontario Municipal Board Act*.

R.S.O. 1980,
c. 347

Delivery of
notice of
appeal

(3) The regional registrar of the Assessment Review Board shall promptly deliver or mail a copy of the notice of appeal to the other parties.

Material to
be forwarded
to O.M.B.

(4) The regional registrar shall forward to the Ontario Municipal Board the notice of appeal, the fee mentioned in subsection (2) and any other material in the regional registrar's possession that is necessary for the hearing of the appeal.

New hearing

(5) The appeal shall be by way of a new hearing.

(6) If, on the basis of a decision of the Ontario Municipal Board or on an appeal therefrom, it appears that an alteration should be made in an assessment, the Minister shall, except where an appeal is commenced, alter the assessment to give effect to the decision.

Alteration

12.—(1) The Minister or any person assessed may apply to the Supreme Court or to the district court of the district in which the land is situate for the determination of any question relating to the assessment, except a question as to whether the assessment is too high.

Application to court

(2) The persons to be served with notice under this section are the persons assessed and the Minister.

Service of notice

(3) An appeal lies to the Divisional Court from the judgment of the Supreme Court or the district court.

Appeal to Divisional Court

(4) The appeal from any judgment given by the Supreme Court or by a district court under this section shall not cause the assessment to be amended, but when such appeal has been disposed of, the Minister shall cause changes to be made in the assessment to give effect to the final determination.

When assessment to be changed

(5) The judgment of the Supreme Court, the district court or the Divisional Court is binding upon the Assessment Review Board and the Ontario Municipal Board.

Judgment of court binding on Assessment Review Board, etc.

(6) A proceeding may be brought under this section at any time but the court may only alter an assessment to affect taxes imposed and payable with respect to that assessment in the year in which the proceeding is commenced and any subsequent year.

Time for proceeding

13. No matter that could have been raised by way of complaint to the Assessment Review Board or in a proceeding with respect to an assessment in a court within the times limited for bringing that complaint or proceeding under this Act shall be raised by way of defence in any action or other proceeding brought to collect the taxes.

Defence limited in actions to collect tax

14.—(1) Taxes shall be imposed in each year on the assessment made in the previous year.

Basis of taxation

(2) Nothing in this section deprives a person of any right of appeal provided for in this Act.

Rights of appeal preserved

(3) If the final determination of complaints, appeals or other proceedings increases or reduces an assessment, the

Idem

taxes levied and payable with respect to the assessment shall be adjusted accordingly and,

- (a) any overpayment resulting from the adjustment shall be refunded by the Minister; or
- (b) any underpayment resulting from the adjustment shall be remitted to the Minister.

Tax bills

15.—(1) The tax imposed under this Act shall be for the calendar year and becomes due and payable in two equal instalments on the 1st day of February and the 1st day of October in the year in which it is imposed and the Minister shall deliver a tax bill to every owner of land subject to tax on or before the 1st day of January in the year in which the tax is payable.

Delivery

(2) A tax bill shall be delivered in the same manner and to the same address as a notice of assessment under section 8 but, where land is owned by more than one person, the Minister shall deliver the tax bill to the owner designated by the other owners for this purpose or, if no owner is designated, the Minister may select the person to whom the tax bill shall be sent.

Notice of address

(3) Despite subsection (2), if after the delivery of a notice of assessment and before the delivery of a tax bill under this section, an owner of land subject to tax submits a written notice to the Minister requesting that the tax bill be delivered to a particular address, the tax bill shall be delivered to that address and the notice stands until revoked.

Content of tax bill

(4) The tax bill shall show the assessment of the land, the rate of taxation, the amount of tax payable and such other information as may be prescribed.

Tax bill, omitted assessments

(5) If an assessment is made under subsection 9 (1), the Minister shall deliver to the owner of the taxable commercial property or commercial parking lot a tax bill for all tax owing.

Idem

(6) If the tax bill delivered under subsection (5) covers a portion of a year, the Minister may deliver to the owner a tax bill for a proportion of the amount of the taxes that would have been payable under this Act for the year if the land omitted from assessment had been liable to assessment and taxation for the whole year, in the ratio that the number of full months remaining in the year after the land becomes liable to assessment and taxation bears to the number 12.

(7) If, between the 1st day of January and the 30th day of November in any year, land becomes liable to assessment and taxation under this Act for a reason described in clause 9 (2) (a) or (b), the Minister may deliver to the owner a tax bill for a proportion of the amount of the taxes that would have been payable under this Act for the year, if the land had been liable to assessment and taxation for the whole year, in the ratio that the number of full months remaining in the year after the land becomes liable to assessment and taxation bears to the number 12.

Tax on
supple-
mentary
assessment

(8) When a tax bill is issued under subsections (5) and (7), the tax billed is due and payable within thirty days of the date of that bill but, if a tax bill is issued before the 1st day of September in a year, the second instalment of tax payable with respect to the current year is payable on the 1st day of October in that year.

Second
instalment

(9) Owners of land are jointly and severally liable for the payment of tax under this Act.

Liability for
payment of
tax

(10) The penalty for late payment of any instalment of tax payable under this Act is an amount equal to 5 per cent of the tax payable up to a maximum of \$10,000.

Penalty for
late payment

(11) If, on a particular date, a debt as calculated under subsection (12) is payable by an owner, the owner shall be charged interest payable to the Treasurer at the prescribed rate and calculated in the prescribed manner on the amount of the debt from that date to the date the amount is received by the Minister.

Interest

(12) The amount of the debt payable by an owner under this Act at a particular date is the amount by which,

Calculation
of debt

(a) the aggregate of,

- (i) all instalments of tax under this Act payable by the owner before that date with respect to the current and all previous years,
- (ii) the amount, if any, by which the total amount of tax payable by the owner under this Act for all years ending before that date exceeds the aggregate of all instalments of tax payable by the owner under this Act in those years,
- (iii) all penalties assessed under this Act against the owner at any time before that date, and

- (iv) the total of all amounts of interest charged under this section to the owner in respect of a period of time ending before that date,


exceeds,

- (b) the aggregate of,

- (i) the amount of all instalments paid by the owner under this Act in a year ending before that date, and

- (ii) the total of all amounts of interest credited to the owner in respect of a period of time ending before that date.

Compound
interest

(13) The interest under subsection (11) shall be computed and compounded monthly to the date on which it is paid. 

Cancellation,
reduction,
refund of
taxes

16.—(1) An owner of land may apply to the Minister for the cancellation, reduction or refund of taxes imposed in the year in respect of which the application is made, or for any part of either or both of the two preceding years, if,

- (a) the land has become exempt from taxation during the year or during the two preceding years after the delivery of assessment notices;
- (b) during the year or during the two preceding years after the delivery of assessment notices the land was razed by fire or demolition or was damaged by fire or demolition so as to render it substantially unusable as a commercial property or as a commercial parking lot; or
- (c) the owner has been overcharged by reason of a clerical error, the transposition of figures, a typographical error or similar type of error, but not an error in judgment in making the assessment upon which the taxes have been calculated.

Idem

(2) If an owner who is entitled to apply for the cancellation, reduction or refund of taxes under clause (1) (c) fails to apply, the Minister may apply in his or her stead and this section applies with necessary modifications to that application.

Time for
making
application

(3) An application under subsection (1) may be made at any time during the year in respect of which the application is made and until the 28th day of February in the following year.

(4) The Minister shall with all due dispatch consider the application and may, Powers of Minister

- (a) reject the application;
- (b) if the taxes have not been paid, cancel the taxes or reduce the taxes;
- (c) if the taxes have been paid in full, order a refund of the taxes or any part thereof; or
- (d) if the taxes have been paid in part, order a refund of the taxes paid or any part thereof and reduce or cancel the portion of the taxes unpaid.

(5) The Minister shall, by ordinary mail or by personal service, give the applicant notice of the decision respecting the application together with written reasons therefor. Notice of decision

(6) A cancellation, reduction or refund under clause (1) (a) shall be for a proportionate part of the taxes based on the number of months in the year during which the exemption existed. Proportionate cancellation, reduction or refund

(7) A cancellation, reduction or refund under clause (1) (b) shall be for a proportionate part of the taxes based on the number of months in the year during which the land was razed or damaged by fire or demolition. Idem

(8) Where an applicant objects to a notice given under subsection (5), (15) or (18), the applicant may, within sixty days from the date of mailing or personal service of the notice, serve on the Minister, by registered mail addressed to the Minister, a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts. Objection

(9) The Minister may accept a notice of objection even if it is not served in the manner required. Acceptance of notice

(10) Upon receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the decision objected to, and the Minister shall promptly notify the applicant of his or her decision by registered mail. Reconsideration

(11) A decision of the Minister under subsection (10) is final and is not subject to appeal unless the decision involves the interpretation of a provision of this Act or involves an issue solely of law. Where decision final

Resolution of
question

(12) In any dispute over a decision of the Minister under subsection (10), the Minister may, where the dispute involves the interpretation of a provision of this Act or involves an issue solely of law in which no facts are in dispute or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the applicant as to the undisputed facts and apply to the Divisional Court to have the issue in dispute determined.

Idem

(13) If the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the applicant may apply to the court to have the issue determined.

Restoration
of taxes

(14) If the Minister has made a decision in any year under subsection (4) to cancel, refund or reduce taxes for that year in respect of land mentioned in clause (1) (b) and the Minister is subsequently satisfied that the land has been reconstructed or repaired and has been returned to use before the end of that year, the Minister may direct that such portion as the Minister considers appropriate of the tax reduction, or of the taxes that were cancelled or refunded, be restored as taxes owing for that year.

Direction

(15) A direction under subsection (14) may be made at any time up to the 28th day of February of the immediately following year and the Minister shall, by ordinary mail or by personal service, give the applicant notice of the direction together with written reasons therefor.

Payment

(16) The Minister shall bill the owner of land for taxes restored under subsection (14) and the tax billed is due and payable within thirty days of the date of the bill but, if a tax bill is issued before the 1st day of September in a year, the second instalment of tax payable with respect to the current year is payable on the 1st day of October in accordance with subsection 15 (1).

Refund of
tax

(17) If a person has paid an amount under this Act as tax and that amount is not payable as tax under this Act, such amount shall be refunded if, within three years following the date of its payment, an application for refund is made to the Minister and it is established to the satisfaction of the Minister that the amount was not payable as tax under this Act.

Notice

(18) The Minister shall notify the applicant of his or her decision by ordinary mail or by personal service.

One
application

(19) Only one application under subsection (17) may be made with respect to any amount paid as tax under this Act.

(20) If an overpayment arises as a result of the cancellation, reduction or refund by the Minister of taxes that have been paid, interest at the rate prescribed, computed and compounded monthly, shall be paid from the date the overpayment arose to the date of refund, unless the amount of interest is less than \$1, in which case no interest shall be paid.

Interest

17.—(1) All taxes imposed under this Act are, upon registration by the Minister in the proper land registry office of a notice claiming the first lien and charge conferred by this section, a first lien and charge upon the land liable to the taxes.

Lien upon
real property

(2) The first lien and charge conferred by subsection (1) is in respect of all taxes that are payable at the time of registration of the notices and all taxes that become payable thereafter while the notice remains registered, and such first lien and charge has priority over all encumbrances or claims registered or attaching to the subject property subsequent to the registration of the notice.

Amounts
included and
priority

18.—(1) Upon default of payment of any tax payable under this Act,

Recovery of
tax

- (a) the Minister may bring an action for recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought in the name of the Minister or in the name of his or her office and may be continued by the Minister's successor in office as if no change had occurred and shall be tried without a jury; or
- (b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment under this Act is located for the amount owed by that person, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff.

(2) A warrant issued under clause (1) (b) has the same effect as a writ of execution issued out of the Supreme Court.

Effect of
warrant

(3) If the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory.

Security for
tax

19.—(1) If the Minister has knowledge or suspects that within ninety days a person is or is about to become indebted or liable to make a payment to a person liable to make a pay-

Garnishment

ment under this Act, the Minister may by registered letter or by letter served personally, require the first-named person to pay the money otherwise payable to the second-named person in whole or in part to the Treasurer immediately on account of the liability under this Act and the requirement shall apply to all money that would otherwise be so paid in the ninety days next following the receipt of the letter.

Idem

(2) Despite subsection (1), if the Minister has knowledge or suspects that within ninety days,

- (a) a bank, credit union, trust company or other similar institution is about to loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a person liable to make a payment under this Act, who is indebted to the institution; or
- (b) a person, other than an institution, is about to loan or advance money to or make a payment on behalf of, a person who is liable to make a payment under this Act and who,
 - (i) is employed by or engaged in providing goods or services to the first-named person and who was, or will within ninety days be, so employed or so engaged, or
 - (ii) is not dealing at arm's length with the first-named person,

the Minister may, by registered letter, or by letter served personally, require the institution or person to pay immediately to the Treasurer, on account of the liability of the person liable to make a payment under this Act, all or part of the money that would otherwise have been loaned, advanced or paid, and any money paid to the Treasurer shall be deemed to have been loaned, advanced or paid to the person liable to make a payment under this Act.

Continuing
effect of
requisition

(3) If the Minister has required a person to pay to the Treasurer money otherwise payable as interest, rent, remuneration, a dividend, an annuity payment or other periodic payment to a person who is liable to make a payment under this Act,

- (a) the requirement applies to all periodic payments to be made by the first-named person to the second-named person after the date of receipt of the

Minister's letter until the liability of the second-named person is satisfied; and

- (b) the payments required to be paid to the Treasurer shall be the full amount of each payment or in such lesser amount as the Minister may designate in the Minister's letter.

(4) The receipt of the Treasurer for money paid as required under this section is sufficient discharge of the original liability to the extent of the payment. Idem

(5) Every person who has discharged any liability to a person liable to make a payment under this Act without complying with the requirement under this section is liable to pay to Her Majesty in right of Ontario the lesser of an amount equal to the liability discharged and the amount that person was required to pay to the Treasurer under this section. Liability of debtor

(6) Every institution that fails to comply with a requirement under subsection (2) is liable to pay to Her Majesty in right of Ontario an amount equal to the lesser of, Idem

(a) the aggregate of the money advanced or paid; and

(b) the amount that it was required under subsection (2) to pay the Treasurer.

(7) If a person who is or is about to become indebted or liable to make a payment to a person liable to payment under this Act carries on business under a name or style other than his or her own name, the registered letter under subsection (1) may be addressed to the name or style under which he or she carries on business and, in the case of personal service, it shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee. Service

(8) If the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment under this Act carry on business as a partnership, a letter under subsection (1) may be addressed to the partnership name and, in the case of personal service, it shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. Idem

(9) This section is subject to the *Wages Act*.

R.S.O. 1980,
c. 526
applies

Failure to
remit

(10) If any person, without reasonable excuse, has failed to remit to the Treasurer the money as required under this section, the Minister may apply before a judge of the Supreme Court for an order directing that person to remit the money.

Remedies for
recovery of
tax

20.—(1) The use of any of the remedies under sections 17, 18 and 19 does not bar or affect the use of any other remedy under those sections or other remedy existing at law.

Limitation

(2) No proceeding taken under section 17, 18 or 19 limits or affects any lien, charge or priority existing under this Act or otherwise.


Compliance
to be proved
by affidavit

(3) In any proceeding taken under this Act, the facts necessary to establish the compliance of the Minister with this Act and the lack of compliance by any person with this Act shall, in the absence of evidence to the contrary, be sufficiently proved by affidavit of the Minister or any officer of the Ministry of Revenue.

Regulations


21.—(1) The Lieutenant Governor in Council may make regulations,

- (a) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;
- (b) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (c) prescribing the rate of interest payable under this Act or the regulations, or a formula for computing that rate, and the method of calculating that interest;
- (d) providing for the rebate of tax in whole or in part owing to special circumstances, and prescribing the conditions under which the rebates may be made and the payment of interest to persons to whom any rebate of tax is made;
- (e) providing for limiting the amount of tax payable under this Act in special circumstances where inconvenience or hardship might otherwise result;
- ➡ (f) prescribing additional classes of land to be included in the definition of “commercial property”;

(g) exempting commercial properties and commercial parking lots from the tax imposed by this Act. 

(2) The Minister may make regulations prescribing any form that is required by this Act or the regulations or that will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain.

Regulations
by Minister

(3) A regulation made under this Act is, if it so provides, effective with reference to a period before it was filed. 

Retroactivity

22.—(1) This Act, except section 3, comes into force on the earlier of,

Commence-
ment

- (a) the day on which it receives Royal Assent; or
- (b) the 1st day of October, 1989.

(2) Section 3 comes into force on the 1st day of January, 1990.

Idem

23. The short title of this Act is the *Commercial Concentration Tax Act, 1989*.

Short title

Bill 46

(Chapter 75
Statutes of Ontario, 1989)

An Act to establish a Commercial Concentration Tax

The Hon. R. Mancini
Minister of Revenue



<i>1st Reading</i>	July 10th, 1989
<i>2nd Reading</i>	October 30th, 1989
<i>3rd Reading</i>	December 19th, 1989
<i>Royal Assent</i>	December 19th, 1989

Bill 46**1989****An Act to establish a Commercial Concentration Tax**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“assessment” means the determination of the gross area of a commercial property or commercial parking lot that is subject to tax under this Act;

“Assessment Review Board” means the Assessment Review Board under the *Assessment Review Board Act*;

R.S.O. 1980,
c. 32

“commercial parking lot” means land used for the parking of vehicles that is accessible to the public and for which a fee is charged;

“commercial property” means land that is a service station, garage, store, shopping centre, office, office building, restaurant, transient accommodation, theatre, cinema, arena, assembly hall or any other classes of land that may be prescribed, or any combination thereof;

“Greater Toronto Area” means the regional municipalities of Durham, Halton, Peel and York and The Municipality of Metropolitan Toronto;

“industrial property” means land that is constructed to be used for the assembling, processing or manufacturing of finished or partially finished products from raw materials or fabricated parts;

“land” includes all buildings, or any part of a building, and all structures and fixtures erected or placed upon, in, over, under or affixed to the land;

“Minister” means the Minister of Revenue;

R.S.O. 1980,
c. 303

“person” includes a partnership, a municipal corporation, including a district, metropolitan or regional municipal corporation or a local board as defined in the *Municipal Affairs Act*, and any board, commission or authority established under any Act of the Legislature;

“prescribed” means prescribed by regulations made under this Act;

“race track” means land where horse racing is carried on;

“tax” includes interest and penalties;

“taxable commercial property” means a commercial property that is liable for taxation under this Act;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

“trucking depot” means land where commercial vehicles are stationed and from which they are dispatched;

“warehouse” means land that is used as a repository, storehouse or shed for the storage of goods and includes any building or structure from which goods are distributed for sale off the premises, but does not include a building or structure, the primary purpose of which is the sale of goods to the public.

Taxable
commercial
property

2.—(1) Commercial property is liable to taxation under this Act if the gross area of the commercial property exceeds 18,600 square metres as determined under this section.

Buildings

(2) In respect of commercial property, the gross area is the sum of the areas measured from the outside of the outside walls of any building, part of a building or structure at each level, both above and below ground, excluding any part of a building or structure that is used for vehicle parking.

Parking lots

(3) In respect of a commercial parking lot, the gross area is the sum of the areas measured from the outside of the outside walls of any building, part of a building or structure at each level, both above and below ground, and any other land used exclusively in connection with or for the purpose of the commercial parking lot.

Condominiums
R.S.O. 1980,
c. 84

(4) In the case of a commercial property that is divided into units or proposed units, within the meaning of the *Condominium Act*, the gross area is the aggregate of the area of the units or proposed units plus the area of any common ele-

ments, within the meaning of the *Condominium Act*, that are commercial property.

(5) If a single commercial property contains two or more buildings that are not dependent on shared facilities, each building shall be separately assessed. Multiple buildings

(6) If a commercial property is located on more than one parcel of land, the gross area of that commercial property is, Multiple parcels of land

- (a) the gross area determined under subsection (2) if it consists of a single building; or
- (b) the aggregate gross areas if two or more buildings are dependent on shared facilities.

(7) Subsection (6) applies even if the parcels of land have different owners who are separately liable for their proportionate share of taxes under this Act. Idem

(8) If a parcel of land comprises commercial property and land that is exempt from tax under this Act, the gross area of the land that is exempt shall not be included in the calculation of the gross area used in determining whether the parcel is a taxable commercial property. Mixed use

(9) If a commercial property contains an atrium, the gross area of the land used in determining whether the land is a taxable commercial property shall be reduced by the sum of the areas of the atrium at each level surrounding the atrium and no tax is payable under this Act in respect of the atrium, but no reduction in the gross area or in the tax payable shall be made for the floor of the atrium. Atria

3.—(1) Land located within the Greater Toronto Area that is a taxable commercial property is liable to taxation in each year at a rate equal to \$10.75 for each square metre by which the gross area of the land exceeds 18,600 square metres. Tax on commercial property

(2) Land located within the Greater Toronto Area that is a commercial parking lot is liable to taxation in each year at a rate equal to \$10.75 for each square metre of the gross area of the land. Commercial parking lot

(3) Commercial property located within the Greater Toronto Area that is a unit, a proposed unit or the common elements, within the meaning of the *Condominium Act*, and that is part of a taxable commercial property is liable to taxation in each year for that portion of the tax otherwise imposed Condominium
R.S.O. 1980, c. 84

on such taxable commercial property that the area of the unit, proposed unit or common elements bears to the area of the taxable commercial property.

Multiple
parcels

(4) Each owner of commercial property located within the Greater Toronto Area that is part of a taxable commercial property and that is situated on a separate parcel of land is liable to taxation in each year for that portion of the tax otherwise imposed on such taxable commercial property that the area of the commercial property bears to the area of the taxable commercial property.

Liability for
tax

R.S.O. 1980,
c. 84

(5) The tax under this section is payable to Her Majesty in right of Ontario by the owner of the land but, if the land is the common elements within the meaning of the *Condominium Act*, the tax is payable,

- (a) by the declarant, within the meaning of the *Condominium Act*, if the registration of a declaration and description has not occurred; or
- (b) by the owners of the units in the same proportion as their interest in the common elements, if the registration of the declaration and description has occurred.

Parking on
Crown land

(6) Despite subsection 4 (3), a tenant who operates a commercial parking lot on land within the Greater Toronto Area that is owned by the Crown or in which the Crown has an interest, if rent or other valuable consideration is paid in respect of the land, shall be assessed in respect of that land and shall pay taxes under this Act as if the land were owned by the tenant.

Exemptions

4.—(1) Land that is residential or industrial property, or that is a race track, pipeline, trucking depot or warehouse is exempt from tax under this Act.

Idem

(2) Land that is a research and development facility is exempt from tax under this Act.

Idem

(3) Land that is exempt from taxes for municipal and school purposes by any other Act is exempt from tax under this Act, other than a commercial parking lot operated by a municipality or local board as defined in the *Municipal Affairs Act*.

R.S.O. 1980,
c. 303

Commercial
parking lots

(4) Land that is a commercial parking lot is exempt from tax under this Act if it is operated as a commercial parking lot on a seasonal basis.

5.—(1) The Minister may authorize persons to carry out assessments for the purpose of this Act. Assessors

(2) An assessor authorized under subsection (1), upon producing proper identification, shall at all reasonable times and upon reasonable request be given free access to all land. Right of access

(3) Every adult person present on land when an assessor visits the land in the performance of his or her duties shall, upon request, give to the assessor all the information in his or her knowledge that will assist in a proper assessment. Information

(4) The Minister is not bound by any information provided under subsection (3) and the Minister may make inquiries to ascertain its correctness. Minister not bound by information

6.—(1) Every person who refuses to provide information as requested under subsection 5 (3) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 and to an additional fine of \$100 for each day during which the offence continues. Offence for failure to provide information

(2) Every person who knowingly makes a false statement in providing information under subsection 5 (3) is guilty of an offence and on conviction is liable to a fine of not more than \$500. Offence, false statement

(3) Every person who wilfully obstructs or interferes with an assessor in the performance of his or her duties or the exercise of his or her powers under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500. Offence, obstruction

7.—(1) The Minister shall record the name and address of every owner of land that is liable to tax under this Act, a description of the land sufficient to identify it and the gross area of the land upon which tax will be calculated. Assessment information

(2) The Minister shall maintain a register of all owners of land assessed under this Act and the register shall be open for public inspection during normal office hours. Register

(3) Subject to section 2, each subdivision shall be assessed separately. Subdivisions assessed separately

8.—(1) Not later than the second Tuesday following the 1st day of October in each year, the Minister shall assess and deliver to every owner of land, subject to tax under this Act, a notice of assessment in the prescribed form of the gross area Notice of assessment

of each taxable commercial property or commercial parking lot assessed.

Idem (2) In any proceeding, a certificate of the Minister setting out the dates upon which notices were delivered is, in the absence of evidence to the contrary, proof of the delivery of the notice.

Idem (3) If land is owned by more than one person, the Minister shall deliver a notice of assessment to each owner.

Extension of time for notice of assessment (4) If in any year it appears that the notices of assessment will not be or have not been delivered as provided in subsection (1), the Minister may extend the time for delivering the notices.

Notice of extension (5) The Minister shall cause a notice of extension to be published in a daily newspaper that, in the opinion of the Minister, has such circulation within the Greater Toronto Area as to provide reasonable notice to persons affected by it.

Contents of notice (6) The notice of extension shall specify the date to which the time has been extended and the final date for commencing an appeal to the Assessment Review Board.

Assessment valid and binding (7) The assessment is, subject to subsections 14 (2) and (3), valid and binds all parties concerned, despite any defect or error in the assessment or in the notice required by this section or the omission to deliver the notice.

Delivery of notices (8) The notice of assessment shall be delivered by leaving it at or mailing it to the residence or place of business of the person liable to pay tax.

Delivery to requested address (9) If a person liable to pay tax submits a written notice to the Minister requesting that the notice of assessment be delivered to a particular address, the notice of assessment shall be delivered to that address and the notice stands until revoked.

Correction of errors (10) The Minister may, before the fifteenth day following the day on which notices of assessment are delivered or the date to which the delivery of assessment notices is extended under subsection (4), correct any defect, error or omission in any assessment and shall deliver an amended notice to the person assessed.

Omission **9.—**(1) If any taxable commercial property or commercial parking lot has not been assessed in whole or in part for the current year or for any part of either of the next two preceding years, and no taxes have been imposed for the assessment

omitted, the Minister shall make any assessment necessary to rectify the omission and such taxes as would have been payable if the assessment had been made shall be imposed and collected.

(2) If, after assessment notices have been given under subsection 8 (1) and before the last day of the taxation year for which taxes are imposed on the assessment referred to in the notices,

Supplementary assessments

- (a) an increase in the gross area results from the erection, alteration, enlargement or improvement of any land or a portion thereof that commences to be used as a commercial property or a commercial parking lot; or
- (b) land or a portion thereof ceases to be exempt from taxation,

the Minister shall make such supplementary assessment as may be necessary to reflect the change.

(3) If a supplementary assessment has been made, the amount of taxes to be imposed shall be the amount of taxes that would have been imposed for the portion of the taxation year remaining after the change occurred if the assessment had been made in the usual way.

Idem

(4) Notice that an assessment under subsection 8 (10) or under subsection (1) or (2) has been made shall be given to the owner of the land who is entitled to appeal as if the assessment had been regularly made.

Notice and appeal

10.—(1) Any person who is assessed under this Act may complain in writing to the Assessment Review Board that the assessment is too high.

Complaint to Assessment Review Board

(2) A complaint shall state the name and address where notices can be given to the complainant and shall be delivered or mailed to the regional registrar of the Assessment Review Board within thirty-five days following the day on which notices of assessment are delivered or the date to which the delivery of assessment notices is extended under subsection 8 (4).

Time for making complaint

(3) The regional registrar shall promptly transmit a copy of all complaints received to the Minister.

Copy to Minister

(4) The parties to the proceedings are the Minister and all persons complaining.

Parties

Notice of
hearing

(5) The regional registrar shall give at least fourteen days notice to the parties of any hearing by the Assessment Review Board.

Adding
parties

(6) If during the hearing it appears that another person should be a party to the hearing, the Board shall add the person as a party and, if necessary, adjourn and give the person notice of the hearing.

Copy of
register
admissible

(7) A copy of the register under subsection 7 (1), certified to be a true copy by the Minister, is admissible in evidence in any proceeding as proof of the original assessment made against each owner recorded in the register and, in the absence of evidence to the contrary, is proof of the contents of the assessment.

Preliminary
explanation

(8) At the commencement of a hearing respecting the determination of the gross area of a commercial property or a commercial parking lot, the assessor shall explain the manner in which the assessment was arrived at and the complainant shall explain the nature of his or her complaint.

Alteration of
assessment

(9) The decision of the Assessment Review Board shall be forwarded by the regional registrar to the Minister and the Minister shall alter the assessment in accordance with the decision if no appeal is taken.

Appeal to
O.M.B.

11.—(1) An appeal lies to the Ontario Municipal Board from the decision of the Assessment Review Board under section 10.

Notice of
appeal

(2) The party appealing shall, within twenty-one days of the mailing of the decision of the Assessment Review Board, deliver or mail to the regional registrar of the Assessment Review Board a notice of appeal accompanied by the fee prescribed under the *Ontario Municipal Board Act*.

R.S.O. 1980,
c. 347

Delivery of
notice of
appeal

(3) The regional registrar of the Assessment Review Board shall promptly deliver or mail a copy of the notice of appeal to the other parties.

Material to
be forwarded
to O.M.B.

(4) The regional registrar shall forward to the Ontario Municipal Board the notice of appeal, the fee mentioned in subsection (2) and any other material in the regional registrar's possession that is necessary for the hearing of the appeal.

New hearing

(5) The appeal shall be by way of a new hearing.

(6) If, on the basis of a decision of the Ontario Municipal Board or on an appeal therefrom, it appears that an alteration should be made in an assessment, the Minister shall, except where an appeal is commenced, alter the assessment to give effect to the decision.

Alteration

12.—(1) The Minister or any person assessed may apply to the Supreme Court or to the district court of the district in which the land is situate for the determination of any question relating to the assessment, except a question as to whether the assessment is too high.

Application to court

(2) The persons to be served with notice under this section are the persons assessed and the Minister.

Service of notice

(3) An appeal lies to the Divisional Court from the judgment of the Supreme Court or the district court.

Appeal to Divisional Court

(4) The appeal from any judgment given by the Supreme Court or by a district court under this section shall not cause the assessment to be amended, but when such appeal has been disposed of, the Minister shall cause changes to be made in the assessment to give effect to the final determination.

When assessment to be changed

(5) The judgment of the Supreme Court, the district court or the Divisional Court is binding upon the Assessment Review Board and the Ontario Municipal Board.

Judgment of court binding on Assessment Review Board, etc.

(6) A proceeding may be brought under this section at any time but the court may only alter an assessment to affect taxes imposed and payable with respect to that assessment in the year in which the proceeding is commenced and any subsequent year.

Time for proceeding

13. No matter that could have been raised by way of complaint to the Assessment Review Board or in a proceeding with respect to an assessment in a court within the times limited for bringing that complaint or proceeding under this Act shall be raised by way of defence in any action or other proceeding brought to collect the taxes.

Defence limited in actions to collect tax

14.—(1) Taxes shall be imposed in each year on the assessment made in the previous year.

Basis of taxation

(2) Nothing in this section deprives a person of any right of appeal provided for in this Act.

Rights of appeal preserved

(3) If the final determination of complaints, appeals or other proceedings increases or reduces an assessment, the

Idem

taxes levied and payable with respect to the assessment shall be adjusted accordingly and,

- (a) any overpayment resulting from the adjustment shall be refunded by the Minister; or
- (b) any underpayment resulting from the adjustment shall be remitted to the Minister.

Tax bills

15.—(1) The tax imposed under this Act shall be for the calendar year and becomes due and payable in two equal instalments on the 1st day of February and the 1st day of October in the year in which it is imposed and the Minister shall deliver a tax bill to every owner of land subject to tax on or before the 1st day of January in the year in which the tax is payable.

Delivery

(2) A tax bill shall be delivered in the same manner and to the same address as a notice of assessment under section 8 but, where land is owned by more than one person, the Minister shall deliver the tax bill to the owner designated by the other owners for this purpose or, if no owner is designated, the Minister may select the person to whom the tax bill shall be sent.

Notice of
address

(3) Despite subsection (2), if after the delivery of a notice of assessment and before the delivery of a tax bill under this section, an owner of land subject to tax submits a written notice to the Minister requesting that the tax bill be delivered to a particular address, the tax bill shall be delivered to that address and the notice stands until revoked.

Content of
tax bill

(4) The tax bill shall show the assessment of the land, the rate of taxation, the amount of tax payable and such other information as may be prescribed.

Tax bill,
omitted
assessments

(5) If an assessment is made under subsection 9 (1), the Minister shall deliver to the owner of the taxable commercial property or commercial parking lot a tax bill for all tax owing.

Idem

(6) If the tax bill delivered under subsection (5) covers a portion of a year, the Minister may deliver to the owner a tax bill for a proportion of the amount of the taxes that would have been payable under this Act for the year if the land omitted from assessment had been liable to assessment and taxation for the whole year, in the ratio that the number of full months remaining in the year after the land becomes liable to assessment and taxation bears to the number 12.

(7) If, between the 1st day of January and the 30th day of November in any year, land becomes liable to assessment and taxation under this Act for a reason described in clause 9 (2) (a) or (b), the Minister may deliver to the owner a tax bill for a proportion of the amount of the taxes that would have been payable under this Act for the year, if the land had been liable to assessment and taxation for the whole year, in the ratio that the number of full months remaining in the year after the land becomes liable to assessment and taxation bears to the number 12.

Tax on
supple-
mentary
assessment

(8) When a tax bill is issued under subsections (5) and (7), the tax billed is due and payable within thirty days of the date of that bill but, if a tax bill is issued before the 1st day of September in a year, the second instalment of tax payable with respect to the current year is payable on the 1st day of October in that year.

Second
instalment

(9) Owners of land are jointly and severally liable for the payment of tax under this Act.

Liability for
payment of
tax

(10) The penalty for late payment of any instalment of tax payable under this Act is an amount equal to 5 per cent of the tax payable up to a maximum of \$10,000.

Penalty for
late payment

(11) If, on a particular date, a debt as calculated under subsection (12) is payable by an owner, the owner shall be charged interest payable to the Treasurer at the prescribed rate and calculated in the prescribed manner on the amount of the debt from that date to the date the amount is received by the Minister.

Interest

(12) The amount of the debt payable by an owner under this Act at a particular date is the amount by which,

Calculation
of debt

(a) the aggregate of,

- (i) all instalments of tax under this Act payable by the owner before that date with respect to the current and all previous years,
- (ii) the amount, if any, by which the total amount of tax payable by the owner under this Act for all years ending before that date exceeds the aggregate of all instalments of tax payable by the owner under this Act in those years,
- (iii) all penalties assessed under this Act against the owner at any time before that date, and

- (iv) the total of all amounts of interest charged under this section to the owner in respect of a period of time ending before that date,

exceeds,

- (b) the aggregate of,

- (i) the amount of all instalments paid by the owner under this Act in a year ending before that date, and

- (ii) the total of all amounts of interest credited to the owner in respect of a period of time ending before that date.

Compound
interest

(13) The interest under subsection (11) shall be computed and compounded monthly to the date on which it is paid.

Cancellation,
reduction,
refund of
taxes

16.—(1) An owner of land may apply to the Minister for the cancellation, reduction or refund of taxes imposed in the year in respect of which the application is made, or for any part of either or both of the two preceding years, if,

- (a) the land has become exempt from taxation during the year or during the two preceding years after the delivery of assessment notices;
- (b) during the year or during the two preceding years after the delivery of assessment notices the land was razed by fire or demolition or was damaged by fire or demolition so as to render it substantially unusable as a commercial property or as a commercial parking lot; or
- (c) the owner has been overcharged by reason of a clerical error, the transposition of figures, a typographical error or similar type of error, but not an error in judgment in making the assessment upon which the taxes have been calculated.

Idem

(2) If an owner who is entitled to apply for the cancellation, reduction or refund of taxes under clause (1) (c) fails to apply, the Minister may apply in his or her stead and this section applies with necessary modifications to that application.

Time for
making
application

(3) An application under subsection (1) may be made at any time during the year in respect of which the application is made and until the 28th day of February in the following year.

(4) The Minister shall with all due dispatch consider the application and may, Powers of Minister

- (a) reject the application;
- (b) if the taxes have not been paid, cancel the taxes or reduce the taxes;
- (c) if the taxes have been paid in full, order a refund of the taxes or any part thereof; or
- (d) if the taxes have been paid in part, order a refund of the taxes paid or any part thereof and reduce or cancel the portion of the taxes unpaid.

(5) The Minister shall, by ordinary mail or by personal service, give the applicant notice of the decision respecting the application together with written reasons therefor. Notice of decision

(6) A cancellation, reduction or refund under clause (1) (a) shall be for a proportionate part of the taxes based on the number of months in the year during which the exemption existed. Proportionate cancellation, reduction or refund

(7) A cancellation, reduction or refund under clause (1) (b) shall be for a proportionate part of the taxes based on the number of months in the year during which the land was razed or damaged by fire or demolition. Idem

(8) Where an applicant objects to a notice given under subsection (5), (15) or (18), the applicant may, within sixty days from the date of mailing or personal service of the notice, serve on the Minister, by registered mail addressed to the Minister, a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts. Objection

(9) The Minister may accept a notice of objection even if it is not served in the manner required. Acceptance of notice

(10) Upon receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the decision objected to, and the Minister shall promptly notify the applicant of his or her decision by registered mail. Reconsideration

(11) A decision of the Minister under subsection (10) is final and is not subject to appeal unless the decision involves the interpretation of a provision of this Act or involves an issue solely of law. Where decision final

Resolution of
question

(12) In any dispute over a decision of the Minister under subsection (10), the Minister may, where the dispute involves the interpretation of a provision of this Act or involves an issue solely of law in which no facts are in dispute or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the applicant as to the undisputed facts and apply to the Divisional Court to have the issue in dispute determined.

Idem

(13) If the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the applicant may apply to the court to have the issue determined.

Restoration
of taxes

(14) If the Minister has made a decision in any year under subsection (4) to cancel, refund or reduce taxes for that year in respect of land mentioned in clause (1) (b) and the Minister is subsequently satisfied that the land has been reconstructed or repaired and has been returned to use before the end of that year, the Minister may direct that such portion as the Minister considers appropriate of the tax reduction, or of the taxes that were cancelled or refunded, be restored as taxes owing for that year.

Direction

(15) A direction under subsection (14) may be made at any time up to the 28th day of February of the immediately following year and the Minister shall, by ordinary mail or by personal service, give the applicant notice of the direction together with written reasons therefor.

Payment

(16) The Minister shall bill the owner of land for taxes restored under subsection (14) and the tax billed is due and payable within thirty days of the date of the bill but, if a tax bill is issued before the 1st day of September in a year, the second instalment of tax payable with respect to the current year is payable on the 1st day of October in accordance with subsection 15 (1).

Refund of
tax

(17) If a person has paid an amount under this Act as tax and that amount is not payable as tax under this Act, such amount shall be refunded if, within three years following the date of its payment, an application for refund is made to the Minister and it is established to the satisfaction of the Minister that the amount was not payable as tax under this Act.

Notice

(18) The Minister shall notify the applicant of his or her decision by ordinary mail or by personal service.

One
application

(19) Only one application under subsection (17) may be made with respect to any amount paid as tax under this Act.

(20) If an overpayment arises as a result of the cancellation, reduction or refund by the Minister of taxes that have been paid, interest at the rate prescribed, computed and compounded monthly, shall be paid from the date the overpayment arose to the date of refund, unless the amount of interest is less than \$1, in which case no interest shall be paid.

Interest

17.—(1) All taxes imposed under this Act are, upon registration by the Minister in the proper land registry office of a notice claiming the first lien and charge conferred by this section, a first lien and charge upon the land liable to the taxes.

Lien upon
real property

(2) The first lien and charge conferred by subsection (1) is in respect of all taxes that are payable at the time of registration of the notices and all taxes that become payable thereafter while the notice remains registered, and such first lien and charge has priority over all encumbrances or claims registered or attaching to the subject property subsequent to the registration of the notice.

Amounts
included and
priority

18.—(1) Upon default of payment of any tax payable under this Act,

Recovery of
tax

(a) the Minister may bring an action for recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought in the name of the Minister or in the name of his or her office and may be continued by the Minister's successor in office as if no change had occurred and shall be tried without a jury; or

(b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment under this Act is located for the amount owed by that person, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff.

(2) A warrant issued under clause (1) (b) has the same effect as a writ of execution issued out of the Supreme Court.

Effect of
warrant

(3) If the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory.

Security for
tax

19.—(1) If the Minister has knowledge or suspects that within ninety days a person is or is about to become indebted or liable to make a payment to a person liable to make a pay-

Garnishment

ment under this Act, the Minister may by registered letter or by letter served personally, require the first-named person to pay the money otherwise payable to the second-named person in whole or in part to the Treasurer immediately on account of the liability under this Act and the requirement shall apply to all money that would otherwise be so paid in the ninety days next following the receipt of the letter.

Idem

(2) Despite subsection (1), if the Minister has knowledge or suspects that within ninety days,

- (a) a bank, credit union, trust company or other similar institution is about to loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a person liable to make a payment under this Act, who is indebted to the institution; or
- (b) a person, other than an institution, is about to loan or advance money to or make a payment on behalf of, a person who is liable to make a payment under this Act and who,
 - (i) is employed by or engaged in providing goods or services to the first-named person and who was, or will within ninety days be, so employed or so engaged, or
 - (ii) is not dealing at arm's length with the first-named person,

the Minister may, by registered letter, or by letter served personally, require the institution or person to pay immediately to the Treasurer, on account of the liability of the person liable to make a payment under this Act, all or part of the money that would otherwise have been loaned, advanced or paid, and any money paid to the Treasurer shall be deemed to have been loaned, advanced or paid to the person liable to make a payment under this Act.

Continuing
effect of
requisition

(3) If the Minister has required a person to pay to the Treasurer money otherwise payable as interest, rent, remuneration, a dividend, an annuity payment or other periodic payment to a person who is liable to make a payment under this Act,

- (a) the requirement applies to all periodic payments to be made by the first-named person to the second-named person after the date of receipt of the

Minister's letter until the liability of the second-named person is satisfied; and

- (b) the payments required to be paid to the Treasurer shall be the full amount of each payment or in such lesser amount as the Minister may designate in the Minister's letter.

(4) The receipt of the Treasurer for money paid as required under this section is sufficient discharge of the original liability to the extent of the payment. Idem

(5) Every person who has discharged any liability to a person liable to make a payment under this Act without complying with the requirement under this section is liable to pay to Her Majesty in right of Ontario the lesser of an amount equal to the liability discharged and the amount that person was required to pay to the Treasurer under this section. Liability of debtor

(6) Every institution that fails to comply with a requirement under subsection (2) is liable to pay to Her Majesty in right of Ontario an amount equal to the lesser of, Idem

- (a) the aggregate of the money advanced or paid; and
- (b) the amount that it was required under subsection (2) to pay the Treasurer.

(7) If a person who is or is about to become indebted or liable to make a payment to a person liable to payment under this Act carries on business under a name or style other than his or her own name, the registered letter under subsection (1) may be addressed to the name or style under which he or she carries on business and, in the case of personal service, it shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee. Service

(8) If the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment under this Act carry on business as a partnership, a letter under subsection (1) may be addressed to the partnership name and, in the case of personal service, it shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. Idem

(9) This section is subject to the *Wages Act*.

R.S.O. 1980,
c. 526
applies

Failure to
remit

(10) If any person, without reasonable excuse, has failed to remit to the Treasurer the money as required under this section, the Minister may apply before a judge of the Supreme Court for an order directing that person to remit the money.

Remedies for
recovery of
tax

20.—(1) The use of any of the remedies under sections 17, 18 and 19 does not bar or affect the use of any other remedy under those sections or other remedy existing at law.

Limitation

(2) No proceeding taken under section 17, 18 or 19 limits or affects any lien, charge or priority existing under this Act or otherwise.

Compliance
to be proved
by affidavit

(3) In any proceeding taken under this Act, the facts necessary to establish the compliance of the Minister with this Act and the lack of compliance by any person with this Act shall, in the absence of evidence to the contrary, be sufficiently proved by affidavit of the Minister or any officer of the Ministry of Revenue.

Regulations

21.—(1) The Lieutenant Governor in Council may make regulations,

- (a) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry to exercise any power or perform any duty conferred or imposed upon the Minister by this Act or the regulations;
- (b) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (c) prescribing the rate of interest payable under this Act or the regulations, or a formula for computing that rate, and the method of calculating that interest;
- (d) providing for the rebate of tax in whole or in part owing to special circumstances, and prescribing the conditions under which the rebates may be made and the payment of interest to persons to whom any rebate of tax is made;
- (e) providing for limiting the amount of tax payable under this Act in special circumstances where inconvenience or hardship might otherwise result;
- (f) prescribing additional classes of land to be included in the definition of “commercial property”;

- (g) exempting commercial properties and commercial parking lots from the tax imposed by this Act.

(2) The Minister may make regulations prescribing any form that is required by this Act or the regulations or that will assist in the administration of this Act, and prescribing how and by whom any form shall be completed and what information it shall contain. Regulations
by Minister

(3) A regulation made under this Act is, if it so provides, effective with reference to a period before it was filed. Retroactivity

22.—(1) This Act, except section 3, comes into force on the earlier of, Commence-
ment

(a) the day on which it receives Royal Assent; or

(b) the 1st day of October, 1989.

(2) Section 3 comes into force on the 1st day of January, 1990. Idem

23. The short title of this Act is the *Commercial Concentration Tax Act, 1989*. Short title

Bill 47

**An Act to impose a Tax on Employers
for the purpose of providing for Health Care and to
revise the requirements respecting the payment of
Premiums under the Health Insurance Act**

The Hon. B. Grandmaître
Minister of Revenue



1st Reading July 10th, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill implements the proposal in the Treasurer's Budget of May 17, 1989, to establish a new employer health tax to replace Ontario Health Insurance Plan premiums. The principal features of the Bill are as follows:

1. Employers having permanent establishments in Ontario will be required to pay an employer health tax at a graduated tax rate ranging from 0.98 per cent to 1.95 per cent per year, depending on the total amount of remuneration paid in the year by the employer to his or her employees.
2. The tax is imposed on employers, but is calculated by multiplying the total amount of remuneration paid by the employer to his or her employees in Ontario in the calendar year by the tax rate applicable to that amount of remuneration.
3. Employers who will be taxable at the top rate for a year will be required to make monthly instalment payments on account of the tax for the year while employers subject to the lower rates of tax will be required to make quarterly instalment payments commencing in April, 1990.
4. Employers will be required to deliver annual returns after the end of the year and remit any balance of tax payable for the year.
5. Administrative provisions similar to the provisions in other taxing statutes administered by the Minister of Revenue are contained in the Bill relating to such matters as the keeping of adequate books and records by employers, Ministry audits and tax assessments, time limits for issuing tax assessments, legal remedies to enforce collection of unpaid tax, refunds of tax overpayments, the charging of interest on overdue tax and the payment of interest on tax refunds, objections to and appeals from tax assessments and administrative penalties and offences for failure to comply with the Act.

Bill 47

1989

**An Act to impose a Tax on Employers
for the purpose of providing for Health Care and to
revise the requirements respecting the payment of
Premiums under the Health Insurance Act**

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1.—(1) In this Act,

Definitions

“assessment” includes reassessment;

“employee” means,

- (a) an individual employed by and in the service of an employer,
- (b) an individual who holds office from an employer and receives remuneration in respect of the performance of the duties of the office,
- (c) with reference to reporting for work at a permanent establishment of an employer in Ontario, an employee of the employer from whose remuneration the employer is required to deduct, withhold and remit an amount under the *Income Tax Act* on account of the tax payable by the employee under that Act or would be required to so deduct, withhold and remit if the employee's remuneration were greater;

R.S.O. 1980,
c. 213

“employer” means a person or a government, including the government of a province, a territory or Canada, who pays remuneration to an employee;

“inspector” means a person authorized by the Minister as an inspector under this Act;

“Minister” means Minister of Revenue;

“Ministry” means Ministry of Revenue;

“place of business” means a place where an undertaking or activity, including a function of government, is carried on, whether or not carried on for gain or profit;

“prescribed” means prescribed by the regulations;

“quarter”, in respect of an instalment of tax under this Act, refers to a period of three consecutive months;

“regulations” means regulations made under this Act;

R.S.C. 1952,
c. 148

“remuneration” includes all payments, benefits and allowances received or deemed to be received by an individual that, by reason of section 5, 6 or 7 of the *Income Tax Act* (Canada), are required to be included in the income of the individual for the purposes of that Act and, without limiting the generality of the foregoing, includes salaries and wages, bonuses, taxable allowances and commissions and other similar amounts fixed by reference to the volume of sales made or contracts negotiated, but does not include a pension, annuity or superannuation benefit paid by an employer to a former employee after retirement of the employee;

“small employer”, in respect of a year, means an employer who pays total Ontario remuneration for the year that does not exceed the prescribed amount for the year;

“total Ontario remuneration”, in respect of an employer, means the total remuneration paid,

- (a) to or on behalf of all of the employees of the employer who report for work at a permanent establishment of the employer in Ontario, and
- (b) to or on behalf of all of the employees of the employer who are not required to report for work at a permanent establishment of the employer but whose remuneration is paid from or through a permanent establishment of the employer in Ontario;

“Treasurer” means Treasurer of Ontario.

Permanent
establishment

(2) In this Act, “permanent establishment” includes any fixed place of business, including an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse and a workshop and, without limiting the generality of the foregoing,

- (a) a corporation has a permanent establishment in the place designated in its charter or by-laws as being its head office;
- (b) a person shall be deemed to have a permanent establishment in a jurisdiction in which the person carries on business through an employee or an agent either of whom has general authority to contract for the person;
- (c) a person shall be deemed to have a permanent establishment in a jurisdiction in which an employee or agent of the person has a stock of merchandise owned by the person from which the employee or agent fills orders received by the employee or agent;
- (d) land or premises owned or leased by an employer is a permanent establishment of the employer;
- (e) an employer shall be deemed to have a permanent establishment in the place where and at the time when the employer uses substantial machinery or equipment;
- (f) an insurance corporation has a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business;
- (g) an employer, who does not otherwise carry on business in Canada in a year, has a permanent establishment at any place where the employer produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, anything in Canada, whether or not the employer exports that thing without selling it prior to exportation; and
- (h) an employer who has no fixed place of business shall be deemed to have a permanent establishment in the principal place in which the employer conducts business and in each place from which the employer carries on or transacts a substantial portion of the business.

2.—(1) Every employer shall pay to the Crown in right of ^{Tax} Ontario a tax calculated in accordance with this Act.

(2) The amount of the tax payable by an employer for a year is an amount equal to the product of the total Ontario ^{Calculation of tax}

remuneration paid by the employer during the year multiplied by,

- (a) where the total Ontario remuneration paid by the employer during the year does not exceed \$200,000, a rate of 0.98 per cent;
- (b) where the total Ontario remuneration paid by the employer during the year exceeds \$200,000 but does not exceed \$400,000, the rate set out in the Table opposite the range of remunerations which includes the total Ontario remuneration paid by the employer during the year; or
- (c) where the total Ontario remuneration paid by the employer during the year exceeds \$400,000, a rate of 1.95 per cent.

TABLE

Total Ontario Remuneration	Rate
\$200,001 to and including \$230,000	1.101 per cent
\$230,001 to and including \$260,000	1.223 per cent
\$260,001 to and including \$290,000	1.344 per cent
\$290,001 to and including \$320,000	1.465 per cent
\$320,001 to and including \$350,000	1.586 per cent
\$350,001 to and including \$380,000	1.708 per cent
\$380,001 to and including \$400,000	1.829 per cent

Amounts
included in
total Ontario
remuneration

(3) In determining the tax payable under this Act by any person, a payment made by the person, including a payment in kind, may be deemed by the Minister to be part of the total Ontario remuneration paid by the person where,

- (a) the payment is made to an employee of the person, a former employee of the person or another person who, at the time of the payment, did not deal at arm's length (within the meaning of section 251 of the *Income Tax Act* (Canada)) with an employee or former employee of the person; and
- (b) it is reasonable for the Minister to consider that the payment is made by the person in consideration for services rendered to the employer by the employee, former employee or the other person who did not deal at arm's length with an employee or former employee of the person.

R.S.C. 1952,
c. 148

Exemptions
under other
Acts

(4) No person otherwise subject to tax under this Act is exempt therefrom by reason of an exemption granted to the person, or to or in respect of the personal or real property of

the person, by or under any other Act unless the other Act expressly mentions this Act.

(5) Despite subsection (2), for the purpose of determining the tax payable by an employer on the total Ontario remuneration paid during 1989, the tax payable shall be the amount of the instalment otherwise determined under section 3 to be made in respect of December, 1989, but, where the total Ontario remuneration paid by the employer during December, 1989 does not exceed \$33,333, the tax payable by the employer for 1989 is nil. Liability in 1989

3.—(1) Every employer shall pay monthly instalments to the Treasurer, at the prescribed time or times and in the prescribed manner, on account of the tax payable for the year under this Act by the employer. Instalments

(2) Despite subsection (1), a small employer for the year shall pay quarterly instalments to the Treasurer, at the prescribed time or times and in the prescribed manner, on account of the tax payable for the year under this Act by the small employer. Small employer

(3) The amount of an instalment under subsection (1) or (2) shall be determined according to the following formula: Amount

$$I = T \times R$$

Where:

I is the amount of the instalment in dollars;

T is the total Ontario remuneration paid by the employer during the month or the quarter, as applicable, last ending before the date the instalment is required to be paid;

R is the rate under section 2 that would apply if the total Ontario remuneration paid by the employer for the year was equal to,

- (a) in the case of a monthly instalment, twelve times the total Ontario remuneration paid by the employer for the month immediately preceding the date on which the employer is required to pay the instalment; or
- (b) in the case of a quarterly instalment, four times the total Ontario remuneration paid by the employer for the quarter immediately pre-

ceding the date on which the employer is required to pay the instalment.

Remittance
of instalment
and
statement

(4) Every employer shall remit to the Minister each instalment of tax that the employer is required to pay under this Act together with a statement in a form approved by the Minister setting out the amount of the instalment, the amount of total Ontario remuneration upon which the instalment is calculated and such other information as may be required by the Minister for the purposes of this Act.

Definition

4.—(1) In this section, “Ontario resident” means a person who has a permanent establishment in Ontario.

Deemed
employer

(2) An Ontario resident who enters into an agreement with a non-resident employer under which work is performed or services are provided during a year for the benefit of the Ontario resident by an individual employed by the non-resident employer, the Ontario resident shall be deemed to be the employer of the individual and the individual shall be deemed to be an employee of the Ontario resident during any period in the year when the work is performed or the services are provided, if,

- (a) the non-resident employer does not have a permanent establishment in Ontario during the period and is not subject to tax under this Act calculated by reference to remuneration paid to the individual performing the work or providing the services for the benefit of the Ontario resident during the period;
- (b) the work is performed or the services are provided in Ontario;
- (c) the Ontario resident and the non-resident employer do not deal at arm’s length, within the meaning of section 251 of the *Income Tax Act* (Canada), at any time during the period or did not deal at arm’s length at the time they entered into the agreement or arrangement; and
- (d) the work being performed or the services being provided by the individual for the benefit of the Ontario resident are under the approval and direction of the Ontario resident and are of a nature which, in the Minister’s opinion, could be expected to be carried out by an employee of a person for whose benefit the work is performed or the services are provided.

(3) Where an Ontario resident referred to in subsection (2) is deemed by that subsection to be the employer of an individual employed by a non-resident employer during a period in a year,

Deemed
payment of
remuneration

(a) the Ontario resident shall be deemed to pay remuneration to the individual during the period in which the individual is deemed to be an employee of the Ontario resident in an amount equal to the remuneration paid or to be paid by the non-resident employer to the individual in respect of the work performed or the services provided by the individual in the period for the benefit of the Ontario resident; and

(b) the individual shall be deemed to be an employee who reports for work at a permanent establishment of the Ontario resident in Ontario.

5.—(1) Every employer who is liable to pay tax under this Act for a year shall deliver to the Minister on or before the prescribed date a return in a form approved by the Minister setting out the total Ontario remuneration paid or deemed to have been paid by the employer for the year, the amount of tax payable for the year under this Act and such other information as may be required by the Minister for the purposes of this Act.

Annual
returns

(2) An employer who ceases to have a permanent establishment in Ontario before the end of a year shall deliver the return required under subsection (1) for the year to the Minister on or before the prescribed day.

Cessation of
permanent
establishment

(3) Every employer shall ensure that each return delivered under this section is verified by a certificate that states that the information contained in the return is true and correct and that is signed by the employer, by a duly authorized officer of the employer or, in the case of an employer having its head office outside Ontario, by the manager or chief agent of the employer in Ontario or by such other person or persons having knowledge to the satisfaction of the Minister of the matters required to be disclosed in the return.

Certification
of return

(4) The Minister may at any time require an employer to deliver to the Minister a return in respect of any period of time setting out such information as the Minister may specify for the purposes of this Act.

Supplemental
return

- Unpaid tax (5) The Minister may require the employer to remit to the Minister with the return under subsection (4) any tax under this Act that was not previously paid in respect of the period.
- Extension of time (6) The Minister may extend the time for delivering a return or paying an amount required to be paid under this Act, with or without interest.
- Returns by trustees in bankruptcy, etc. (7) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of an employer shall, if the employer has not delivered a return under this section for a year, deliver the return for the employer on or before the date required under this section.
- Balance of tax (8) Every employer or person referred to in subsection (7) shall remit to the Minister the balance of tax, if any, payable under this Act by the employer in respect of a year at the time the return under this section is required to be delivered.
- Refunds **6.**—(1) If the return required to be delivered by an employer under this Act has been delivered, the Minister,
- (a) may refund without application therefor any overpayment made on account of the tax payable under this Act for the year; and
 - (b) shall make such a refund if application therefor has been made in writing to the Minister within four years from the day on which the return was required to be delivered under section 5.
- Application to other liability (2) Instead of making a refund under subsection (1), the Minister may, where the employer is liable or is about to become liable to make a payment under this Act or under any other Act administered by the Minister, apply the amount of the overpayment to the liability and in such case the Minister shall notify the employer that such action was taken.
- Interest **7.**—(1) Where, on a particular date, the aggregate of the debt payable by an employer under this Act and all amounts which were at any time refunded to the employer or applied under this Act exceed the aggregate of all payments previously made by the employer under this Act, the employer shall be charged interest payable to the Treasurer at the prescribed rate and calculated in the prescribed manner on the amount of such excess from that date to the date the amount of such excess amount is received by the Minister.

(2) Where, on a particular date, the aggregate of all payments previously made by an employer under this Act exceeds the aggregate of the debt payable by the employer under this Act as of that date and all amounts which were at any time refunded to the employer or applied under this Act, the Minister shall pay, credit or apply under this Act interest on the amount of such excess at the prescribed rate and calculated in the prescribed manner from that date to the date the amount of the excess is refunded to the employer or applied in accordance with this Act. Interest paid

(3) Interest under this section shall be computed and compounded monthly to the date on which it is paid, refunded or applied under this Act. Compound interest

(4) In this section, the amount of the debt, if any, payable by an employer under this Act at a particular date is the amount by which, Amount of debt

(a) the aggregate of,

- (i) all instalments of tax under this Act payable by the employer before the date with respect to the current and all prior years,
- (ii) the amount, if any, by which the total amount of tax payable by the employer under this Act for all years ending before the date exceeds the aggregate of all instalments of tax payable by the employer under this Act in those years,
- (iii) all penalties assessed under this Act against the employer at any time before the date, and
- (iv) the aggregate of all amounts each of which is an amount of interest charged under this section to the employer in respect of a period of time ending before the date,

exceeds,

(b) the aggregate of,

- (i) the amount, if any, by which the aggregate of all instalments payable by the employer under this Act in a year ending before the date exceeds the total amount of tax payable by the employer under this Act for those years, and

- (ii) the aggregate of all amounts each of which is an amount of interest credited to the employer in respect of a period of time ending before the date.

Tax
assessments

8.—(1) The Minister may assess the tax, interest or penalties payable in respect of a year under this Act,

- (a) at any time, if the employer or person delivering the return for the year under this Act,
 - (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in delivering the return or in supplying any information under this Act or in omitting to disclose any information, or
 - (ii) has filed with the Minister a waiver in a form approved by the Minister on or before the expiry of the time provided in clause (b); and
- (b) within four years from the later of the day on which the return required under this Act to be delivered was received by the Minister and the day the return was required to be delivered to the Minister.

Notice of
assessment

(2) Where the Minister assesses tax, interest or penalties under subsection (1), the Minister shall send a notice of assessment to the person liable to pay the amount assessed.

Continuation
of liability

(3) Liability for tax or interest payable under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister not
bound by
returns

(4) The Minister is not bound by a statement, a return or information delivered under this Act by or on behalf of any person and may assess the tax and any interest and penalties payable under this Act whether or not a return has been delivered and despite the contents of any return or information delivered to the Minister.

Assessment
valid and
binding

(5) An assessment, subject to being varied or vacated on an objection or appeal and subject to further assessment, shall be deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding under this Act related to the assessment.

Payment of
assessment

(6) Every employer shall, within thirty days from the date of sending of an assessment, pay any assessed tax, interest and

penalties then remaining unpaid, whether or not an objection to or an appeal from the assessment is outstanding.

(7) The Minister may direct that all taxes, interest and penalties then remaining unpaid by an employer on the day of sending of a notice of assessment be paid forthwith by the employer where,

Payment forthwith

- (a) the Minister is of the opinion that the employer is attempting to avoid payment of the taxes, interest or penalties; or
- (b) the Minister made the assessment after the employer failed to deliver a return required under this Act or delivered an incomplete or inaccurate return.

9.—(1) An employer who objects to an assessment made under section 8 may, within 180 days from the day of sending of the notice of assessment, serve on the Minister a notice of objection in duplicate in the form approved by the Minister setting out the reasons for the objection and all relevant facts.

Objection to tax assessment

(2) Service of a notice of objection under this section shall be by registered mail addressed to the Minister or by such other method as is prescribed.

Service of notice of objection

(3) The Minister may accept a notice of objection under this section even though the notice was not served in the manner required by subsection (2).

Acceptance of notice

(4) The time within which a notice of objection is to be served may be extended by the Minister if application for the extension is made within one year from the day of mailing of the notice of assessment which is the subject of the objection.

Extension of time

(5) Upon receipt of the notice of objection, the Minister shall, as quickly as possible, reconsider the assessment and vacate, confirm or vary the assessment.

Minister's duty to reconsider

(6) The Minister shall notify the employer by registered mail or in the prescribed manner as to the action taken by the Minister under subsection (5) as quickly as possible after taking the action.

Notice of decision

(7) An assessment made by the Minister under this section is not invalid by reason only that it is not made within the time required under section 8.

Time

Subsequent
assessment
not to
invalidate

(8) An assessment by the Minister in respect of tax, interest or penalties that relates to the same year in relation to which a notice of objection to assessment is delivered to the Minister or an appeal from assessment is commenced in accordance with this Act does not invalidate the objection or appeal.

Appeal from
assessment

10.—(1) An employer who has served a notice of objection to an assessment under this Act may appeal the assessment, as vacated, confirmed or varied by the Minister, to the Supreme Court.

Time

(2) No appeal under subsection (1) may be commenced more than ninety days after the date on which notice is given to the employer that the Minister has vacated, confirmed or varied the assessment.

Manner

(3) An appeal shall be commenced by serving on the Minister a notice of appeal in duplicate in a form approved by the Minister and filing a copy of the notice with the Registrar of the Supreme Court or the local registrar of the Supreme Court for the district in which the employer appealing has a permanent establishment.

Service

(4) A notice of appeal shall be served upon the Minister by registered mail or in a prescribed manner.

Extension of
time

(5) The Minister may extend the time for commencing an appeal if application for the extension is made before the expiration of the time specified in this section.

Contents

(6) The employer appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons the employer intends to submit in support of the appeal.

Reply

(7) The Minister shall, as quickly as possible, serve on the employer and file with the court a reply to the notice of appeal admitting or denying the facts alleged and stating such further allegations of fact and all statutory provisions and reasons that the Minister intends to rely on.

Application

(8) Where the Minister does not file the reply within 180 days from the date of service of the notice of appeal upon the Minister, the employer may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the Minister to serve and file the reply within such time as the judge may order.

Order

(9) Upon an application under subsection (8), the judge may, if the judge considers it proper in the circumstances,

order also that upon the failure of the Minister to serve and file the reply in the time specified in the order, the assessment or part thereof, as the case may be, with respect to which the appeal is taken shall be vacated and any tax paid pursuant to such assessment or the part thereof shall be repaid to the employer.

(10) Nothing in this section revives an appeal that is void or affects an assessment that has become valid and binding under this Act. Revival

11.—(1) Upon the filing of the notice of appeal and reply in the Supreme Court in accordance with section 10, the matter shall be deemed to be an action in the Supreme Court and the practice and procedure of the Supreme Court, including the right of appeal, and the practice and procedure relating to appeals, apply to the action. Action

(2) Every judgment or order given or made in the action may be enforced in the same manner and by the same process as a judgment or order in an action commenced in the Supreme Court. Enforcement

(3) An assessment shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act. Irregularity

(4) The court may dispose of an appeal by dismissing it, allowing it, or by allowing it and, Powers of court

(a) vacating the assessment;

(b) varying the assessment;

(c) restoring the assessment; or

(d) referring the assessment back to the Minister for reconsideration and reassessment.

(5) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax, interest, penalties or costs by the employer or the Minister, as the court considers appropriate. Order for payment

12.—(1) Every employer required by this Act to pay tax shall keep records and books of account at a permanent establishment in Ontario of the employer or at such other place as is designated by the Minister. Records and books of account

Form and
content

(2) Every employer required by subsection (1) to keep records and books of account shall keep the records and books of account in such form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with.

Failure to
keep records

(3) The Minister may require an employer who has failed to keep records and books of account that comply with subsections (1) and (2) to keep such records and books of account as the Minister specifies.

Retention of
records

(4) Every employer required by this section to keep records and books of account shall, until permission for their disposal is given by the Minister, retain each such record and book of account and every primary source document required to support and verify the entries and information in the records and books of account.

Audits

13.—(1) The Minister may appoint in writing one or more persons as inspectors for the purposes of this Act.

Entry and
inspection

(2) An inspector may at any reasonable time, without a warrant, enter any place of business of an employer to make an inspection to ensure that there is compliance with this Act and the regulations.

Powers on
inspection

(3) Upon an inspection under this section, the inspector,

- (a) has the right to inspect the premises and the operations carried out on the premises;
- (b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant for the purposes of the inspection, regardless of the form or medium in which such books, documents, correspondence and records are kept, but, if they or any of them are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;
- (c) has the right to question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination; and

- (d) has the right to test the accuracy and integrity of computer programs used in processing information relevant to determining any amount payable under this Act.

14. No person shall obstruct an inspector or withhold or conceal from an inspector any book of account, document, correspondence or record, including any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act.

Obstruction
of inspector

15.—(1) The Minister may, for the purpose of the administration or enforcement of this Act, by a written notice require from an employer or from a director, employee or agent of an employer, or from any other person,

Demand for
information

- (a) any information or additional information or any required or prescribed form; or
- (b) production, or production on oath or affirmation, of books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant to the administration or enforcement of this Act.

(2) A notice under subsection (1) may require that the information or production be given or produced within such reasonable time as is specified in the letter or demand.

Time for
production

16. A copy of a book of account, document, correspondence or record, or any part of any of them, certified by an inspector or an employee of the Ministry to be a true copy of the original shall be received in evidence in any proceeding to the same extent and have the same evidentiary value as the material of which it is a copy.

Copies of
documents

17. Any officer or employee of the Ministry who is authorized by the Minister may administer oaths and take or receive affidavits, declarations or affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits.

Adminis-
tration of
oaths

18.—(1) In this section, “institution” means a bank, credit union, trust company or other similar organization.

Garnishment

(2) Where the Minister has knowledge or suspects that a person is or will be, within ninety days, liable to make a payment to an employer who is liable to make a payment under

Notice by
Minister

this Act, the Minister may, by a written notice, require the person to pay forthwith, where the moneys are immediately payable, and, in any other case, as and when the moneys become payable, the moneys otherwise payable to the employer in whole or in part to the Treasurer on account of the employer's liability under this Act.

Idem

(3) Despite subsection (2), where the Minister has knowledge or suspects that within ninety days,

- (a) an institution will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by an employer who is indebted to the institution and who has granted security in respect of the indebtedness; or
- (b) a person other than an institution will loan or advance moneys to, or make a payment on behalf of, an employer who the Minister knows or suspects,
 - (i) is engaged in providing services or property to that person, or was or will be within ninety days, or
 - (ii) where that person is a corporation which is not dealing at arm's length with the employer,

the Minister may, by a written notice, require the institution or the person, as the case may be, to pay in whole or in part to the Treasurer, on account of the employer's liability under this Act, the moneys that would otherwise be loaned, advanced or paid, and any moneys paid to the Treasurer shall be deemed to have been loaned, advanced or paid, as the case may be, to the employer.

Idem

(4) Where, under this section, the Minister has required a person to pay to the Treasurer moneys otherwise payable by the person to an employer as interest, rent, a dividend, an annuity payment, or other periodic payment,

- (a) the requirement shall apply to all such periodic payments to be made by the person to the employer after the date of receipt by the person of the Minister's letter, until the employer's liability under this Act has been satisfied; and
- (b) the payments required to be made to the Treasurer shall be made from each such periodic payment in

the amount or amounts designated in the Minister's letter.

(5) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Receipt of
the Treasurer

(6) Every person who fails to comply with a requirement under subsection (2), (3) or (4) is liable to pay to the Crown in right of Ontario an amount equal to the amount that the person was required under subsection (2), (3) or (4), as applicable, to pay to the Treasurer.

Liability for
failure to
comply

(7) Every institution or person who fails to comply with a requirement under subsection (2), (3) or (4) with respect to moneys to be loaned, advanced or paid is liable to pay to the Crown in right of Ontario an amount equal to the lesser of,

Idem

(a) the aggregate of moneys so loaned, advanced or paid; or

(b) the amount that the institution or person was required by subsection (2), (3) or (4) to pay to the Treasurer.

(8) This section is subject to the *Wages Act*.

Application
of
R.S.O. 1980,
c. 526

19.—(1) Every trustee or other person required by this Act to file an annual return for an employer in respect of a year shall, within thirty days from the day of mailing of a notice of assessment issued by the Minister, pay all taxes, interest and penalties payable under this Act by the employer to the extent that the person has or had, at any time since the year, in his or her possession or control property belonging to the employer or the estate of the employer and shall thereupon be deemed to have made the payment on behalf of the employer.

Liability of
receivers,
etc.

(2) Every assignee, liquidator, receiver, receiver-manager and other agent, other than a trustee in bankruptcy, before distributing any property of the employer under such person's control, shall obtain a certificate from the Minister certifying that all taxes, interest and penalties that have been assessed under this Act and are chargeable against or payable out of the property of the employer have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under this Act.

Certificate of
taxes paid

Personal
liability of
receivers

(3) Any person referred to in subsection (2) who fails to obtain the certificate referred to therein is personally liable to the Crown in right of Ontario for an amount equal to the taxes, interest and penalties under subsection (1) and such debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act.

Recovery of
tax, interest
and penalties

20.—(1) Upon default of payment by an employer of any tax, interest or penalty imposed by this Act,

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office, may be continued by his or her successor in office as if no change had occurred and shall be tried without a jury;
- (b) the Minister may issue a warrant, directed to the sheriff of the district where any property of the employer is located or situate, for the amount of tax, interest and penalty or any of them owing by the employer, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court of Ontario.

Security

(2) The Minister may, if the Minister considers it advisable, accept security for the payment of taxes by an employer by way of a mortgage or other charge of any kind upon the property of the employer or of any other person, or by way of a guarantee of the payment of the taxes by another person.

Costs

(3) The Minister is entitled to recover from an employer the reasonable costs and charges incurred in the course of obtaining payment of taxes, interest or penalties owed by the employer under this Act in connection with,

- (a) the service of a notice or other document;
- (b) the bringing of an action for the recovery of tax, interest and penalties; or
- (c) the issuance and execution of a warrant referred to in clause (1) (b) to the extent not recovered by the sheriff upon execution thereof.

(4) For the purpose of collecting debts owed by an employer to the Crown in right of Ontario under this Act, the Minister may purchase or otherwise acquire any interest in the property of an employer that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and the Minister may dispose of an interest so acquired in such manner as the Minister considers reasonable. Idem

21. Where there is uncertainty as to the liability of an employer to pay any tax imposed under this Act, or where, owing to special circumstances, it is inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as the Minister considers proper in satisfaction of any tax, interest and penalties under this Act. Compromises

22.—(1) Where an employer has failed to pay taxes, interest and penalties or any of them imposed by this Act for a period of more than three years from the date of sending of a notice of assessment under this Act, no person shall sell any property of the employer unless the person has given written notice by registered letter to the Minister not less than ten days before the date of the sale. Notice of
sale of assets

(2) Every person who contravenes subsection (1) is liable to a penalty of not less than an amount equal to the amount of the taxes, interest and penalties owed by the employer on the date of the sale. Penalty

23.—(1) The use of a remedy provided by this Act does not bar or affect any of the other remedies provided by this Act. Remedies

(2) The remedies provided by this Act for the recovery or enforcement of the payment of any tax, interest and penalty or any of them imposed by this Act are in addition to any other remedies existing by law. Additional
remedies

24. No action or other proceeding taken under this Act in any way prejudices, limits or affects any charge or priority existing under this Act or otherwise. Priorities

25. For the purpose of a proceeding under this Act, an affidavit by the Minister or an officer of the Ministry is, in the absence of evidence to the contrary, proof of the facts set out in the affidavit without proof of the signature or office of the Minister or officer of the Ministry. Proof by
affidavit

Confiden-
tiality

26. Every person employed in the administration or enforcement of this Act or in the development and evaluation of tax policy for the Government of Ontario shall preserve secrecy with respect to all matters related to this Act that come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person except,

R.S.C. 1952,
c. 148

- (a) as may be required in connection with the administration or enforcement of this Act, any other Act administered by the Minister or the *Income Tax Act* (Canada) or the regulations made under any of them;
- (b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario;
- (c) with the consent of the person to whom the information or material relates;
- (d) to counsel for the person required by this section to preserve secrecy.

Exchange of
information

27. The Minister may, for the purpose of administering this Act, enter into an agreement with the Government of Canada or the government of any other province or territory of Canada under which such government will be allowed access to information obtained under this Act and the Minister will be allowed access to information obtained under any Act of such government.

Service of
documents

28.—(1) Any notice or other document required by this Act to be served or given may be served personally, may be sent by registered mail addressed to the person to whom the notice or other document is to be served or given at the last known address of the person or may be served in the prescribed manner.

Address

(2) A notice by the Minister under this Act is validly addressed,

- (a) to a person, if addressed to the person in the name or style under which the person carries on business;
- (b) to persons who carry on business in partnership, if addressed to the partnership.

Personal
service

(3) A notice by the Minister under this Act is validly served,

- (a) upon a person, if left with an adult person employed at the place of business of the person to whom the notice is addressed;
- (b) upon persons who carry on business in partnership, if served on one of the partners or left with an adult person employed at the place of business of the partnership.

(4) A notice or other document sent by registered mail in accordance with subsection (1) shall be deemed to have been served or given on the fifth day after the day of mailing unless the person to whom the notice or other document is sent establishes that, although acting in good faith, he or she did not receive the notice or did not receive the notice until a later date.

Registered
mail

(5) A return or other document under this Act that is delivered to the Minister shall be deemed to be delivered on the day it is received by the Minister.

Delivery to
Minister

29.—(1) Every person who fails to deliver a return or statement at the time and in the manner required by this Act or the regulations shall pay a penalty of an amount equal to 10 per cent of the tax or of the instalment on account of tax unpaid on the date the return or statement was required to be delivered, but such penalty shall not be less than \$50 and not more than \$2,500.

Penalties,
failure to
deliver return

(2) Every employer who fails to complete the information required on a return or statement is liable to a penalty of the greater of 1 per cent of tax or of the instalment on account of tax payable by the employer under this Act or \$50, up to a maximum of \$200.

Failure to
complete
return

(3) Where a person, acting or purporting to act on behalf of an employer, knowingly, or in circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes or participates in, assents to or acquiesces in the making of, an incorrect statement or an omission in a return, certificate or other document delivered or made as required by or under this Act or the regulations, the employer is liable to a penalty of 25 per cent of the amount, if any, by which,

False
statement

- (a) the tax for the year that would be payable under this Act if the remuneration paid during the year had been computed by adding to the remuneration reported in the return, certificate or other document for the year that portion of the understate-

ment of remuneration for the year which is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by the employer under this Act had the tax payable for the year been calculated on the basis of the information provided in the return, certificate or other document.

Offences,
statements

30.—(1) Every person who makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer or other document delivered or made as required by or under this Act or the regulations is guilty of an offence.

Idem,
records

(2) Every person who, to evade payment of the tax imposed by this Act, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of an employer is guilty of an offence.

Idem

(3) Every person who makes, assents to or acquiesces in the making of false or deceptive entries in records or books of account of an employer is guilty of an offence.

Offences,
material facts

(4) Every person who omits, or assents to or acquiesces in the omission, to enter a material particular in records or books of account of an employer is guilty of an offence.

Offence,
compliance

(5) Every person who wilfully in any manner evades or attempts to evade compliance with this Act or payment of the tax imposed by this Act is guilty of an offence.

Offence,
conspiracy

(6) Every person who conspires with any other person to commit an offence described in subsections (1) to (5) is guilty of an offence.

Punishment

(7) Every person who is guilty of an offence under subsection (1), (2), (3), (4), (5) or (6), in addition to any other penalty, is liable on conviction to,

- (a) a fine of not less than the greater of \$500 and 25 per cent of the amount of the tax that should have been shown to be payable or that was sought to be evaded and not more than double the amount of the tax which should have been shown to be payable or which was sought to be evaded;

- (b) imprisonment for a term of not more than two years; or
- (c) both a fine under clause (a) and imprisonment under clause (b).

31. Every employer who fails to deliver a return at the time and in the manner required by this Act or the regulations is guilty of an offence and, in addition to any other penalty, is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Offence,
failure to
deliver return

32.—(1) Every person who fails to keep records and books of account in accordance with this Act and the regulations is guilty of an offence.

Offence,
records and
books of
account

(2) Every person who fails to keep such records and books of account as the Minister specifies under subsection 11 (3) is guilty of an offence.

Idem

(3) Every person who fails to retain records, books of account and source documents required by this Act until permission for disposal is given by the Minister is guilty of an offence.

Idem

(4) Every person who is guilty of an offence under subsection (1), (2) or (3) is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Fine

33. Every person who obstructs an inspector or withholds or conceals from an inspector any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$5,000 on a first conviction and not less than \$100 and not more than \$10,000 on each subsequent conviction.

Offence,
obstruction

34. Every person who contravenes or fails to comply with any provision of this Act or the regulations is guilty of an offence and on conviction, where no other fine is provided in this Act, is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000.

General
offence

35. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is guilty of the offence

Officers, etc.,
of
corporations

and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Limitation

36. Proceedings for an offence under this Act or the regulations shall not be commenced after eight years after the date on which the offence was, or is alleged to have been, committed.

Regulations

37.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) defining any word or expression in this Act that has not been expressly defined in this Act;
- (c) prescribing rates of interest for the purposes of this Act or a formula for computing the rates and the method of calculating the interest;
- (d) requiring or permitting the payment of instalments on account of tax payable under this Act at times and with respect to time periods other than as required under section 3, and providing for the method of determining the amount of such instalment payments;
- (e) requiring or permitting the determination of the amount of an instalment payment in a manner other than as required under section 3;
- (f) prescribing persons or classes of persons who will be exempt from the payment of tax and from the requirement to make instalment payments under this Act;
- (g) prescribing classes of individuals or employees whose remuneration shall be deemed not to form part of total Ontario remuneration paid by an employer or a class of employers;
- (h) providing for a rebate of tax in whole or in part and prescribing the terms and conditions under which such rebates shall be made and the method of determining the amount of such rebate.

Minister

- (2) The Minister may make regulations,

- (a) prescribing forms that, in the opinion of the Minister, will assist in the administration of this Act and requiring the use of such forms;
- (b) prescribing how and by whom forms required by this Act or prescribed forms shall be completed;
- (c) prescribing what information shall be set out in forms required by this Act or in prescribed forms.

(3) A regulation is, if it so provides, effective with reference to a period before it is filed under the *Regulations Act*. Retroactivity
R.S.O. 1980,
c. 446

38. This Act binds the Crown.

The Crown

39. The Minister may for any purpose related to the administration of this Act request information from any employer by way of a questionnaire, and every employer shall respond within such reasonable time as is specified in the request. Question-
naires

40.—(1) Clause 4 (2) (b) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by striking out “and collection of premiums” in the second and third lines.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

(3) Every person is entitled to become an insured person without payment of a premium upon application to the General Manager in the form provided by the General Manager if the person, after the 31st day of December, 1989 and before the 1st day of April, 1990, Transitional

- (a) becomes a resident of Ontario; or
- (b) is a resident of Ontario and ceases to be a member of a class designated by the regulations.

(3) Section 12 of the said Act is amended by striking out “during the period in respect of which his premium is paid or dispensed with under this Act” in the fourth, fifth and sixth lines.

(4) Sections 13, 14 and 15 of the said Act are repealed.

(5) Sections 16, 17 and 18 of the said Act are repealed.

(6) Clause 26 (1) (b) of the said Act is repealed.

(7) Clause 28 (a) of the said Act is amended by striking out “or (b)” in the first line.

(8) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

Inspections

(1) Any person designated in writing by the General Manager may enter the premises of a person or organization that was an employer of a mandatory group before the 1st day of January, 1990 or of a person who was a collector under this Act before that date and inspect the books of account, payroll records and other records for the purpose of obtaining information relating to the membership of the group.

(9) Subsection 47 (1) of the said Act is amended by striking out “fails” in the second line and inserting in lieu thereof “has failed”.

(10) Subsection 47 (3) of the said Act is amended by striking out “concur” in the second line and inserting in lieu thereof “has concurred”.

(11) Section 48 of the said Act is amended by striking out “Where an employer or collector that is a corporation fails” in the first and second lines and inserting in lieu thereof “Where a person or organization that was an employer before the 1st day of January, 1990, or a person that was a collector before that date and that is a corporation, has failed”.

(12) Clauses 51 (1) (c), (d) and (e) of the said Act are repealed.

(13) Clauses 51 (1) (g) and (h) of the said Act are repealed.

(14) Clause 51 (1) (o) of the said Act is amended by striking out “in addition to the payment of the premiums” in the second and third lines.

(15) Subsection 51 (1) of the said Act is amended by adding thereto the following clause:

(y) designating classes for the purpose of subsection 11 (3).

(16) Subsection 52 (2) of the said Act is amended by striking out “additional premium or other charge beyond that necessary to entitle him to insured services under the Plan” in the sixth, seventh and eighth lines and inserting in lieu thereof “premium or other charge”.

41.—(1) Except as provided in subsections (2) to (5), this Act comes into force on the 1st day of December, 1989. Commence-
ment

(2) This section and sections 1, 37 and 42 come into force on the day this Act receives Royal Assent. Idem

(3) Section 39 comes into force on the 1st day of August, 1989. Idem

(4) Subsections 40 (2), (5), (8), (9), (10), (11) and (12) come into force on the 1st day of January, 1990. Idem

(5) Subsections 40 (1), (3), (4), (6), (7), (13), (14) and (16) come into force on the 1st day of April, 1990. Idem

42. The short title of this Act is the *Employer Health Tax Act*, 1989. Short title

Bill 47

An Act to impose a Tax on Employers for the purpose of providing for Health Care and to revise the requirements respecting the payment of Premiums under the Health Insurance Act

The Hon. R. Mancini

Minister of Revenue



1st Reading July 10th, 1989

2nd Reading October 26th, 1989

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The Bill implements the proposal in the Treasurer's Budget of May 17, 1989, to establish a new employer health tax to replace Ontario Health Insurance Plan premiums. The principal features of the Bill are as follows:

1. Employers having permanent establishments in Ontario will be required to pay an employer health tax at a graduated tax rate ranging from 0.98 per cent to 1.95 per cent per year, depending on the total amount of remuneration paid in the year by the employer to his or her employees.
2. The tax is imposed on employers, but is calculated by multiplying the total amount of remuneration paid by the employer to his or her employees in Ontario in the calendar year by the tax rate applicable to that amount of remuneration.
3. Employers who will be taxable at the top rate for a year will be required to make monthly instalment payments on account of the tax for the year while employers subject to the lower rates of tax will be required to make quarterly instalment payments.
4. Employers will be required to deliver annual returns after the end of the year and remit any balance of tax payable for the year.
5. Administrative provisions similar to the provisions in other taxing statutes administered by the Minister of Revenue are contained in the Bill relating to such matters as the keeping of adequate books and records by employers, Ministry audits and tax assessments, time limits for issuing tax assessments, legal remedies to enforce collection of unpaid tax, refunds of tax overpayments, the charging of interest on overdue tax and the payment of interest on tax refunds, objections to and appeals from tax assessments and administrative penalties and offences for failure to comply with the Act.

Bill 47

1989

**An Act to impose a Tax on Employers
for the purpose of providing for Health Care and to
revise the requirements respecting the payment of
Premiums under the Health Insurance Act**

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1.—(1) In this Act,

Definitions

“assessment” includes reassessment;

“employee” means,

- (a) an individual employed by and in the service of an employer,
- (b) an individual who holds office from an employer and receives remuneration in respect of the performance of the duties of the office,
- (c) with reference to reporting for work at a permanent establishment of an employer in Ontario, an employee of the employer from whose remuneration the employer is required to deduct, withhold and remit an amount under the *Income Tax Act* on account of the tax payable by the employee under that Act or would be required to so deduct, withhold and remit if the employee's remuneration were greater;

R.S.O. 1980,
c. 213

“employer” means a person or a government, including the government of a province, a territory or Canada, who pays remuneration to an employee;

“inspector” means a person authorized by the Minister as an inspector under this Act;

“Minister” means Minister of Revenue;

“Ministry” means Ministry of Revenue;

“place of business” means a place where an undertaking or activity, including a function of government, is carried on, whether or not carried on for gain or profit;

“prescribed” means prescribed by the regulations;

“quarter”, in respect of an instalment of tax under this Act, refers to a period of three consecutive months;

“regulations” means regulations made under this Act;

R.S.C. 1952,
c. 148

“remuneration” includes all payments, benefits and allowances received or deemed to be received by an individual that, by reason of section 5, 6 or 7 of the *Income Tax Act* (Canada), are required to be included in the income of the individual for the purposes of that Act and, without limiting the generality of the foregoing, includes salaries and wages, bonuses, taxable allowances and commissions and other similar amounts fixed by reference to the volume of sales made or contracts negotiated, but does not include a pension, annuity or superannuation benefit paid by an employer to a former employee after retirement of the employee;

“small employer” means,

- (a) in respect of 1990, an employer who pays total Ontario remuneration for 1990 that does not exceed \$400,000, and
- (b) in respect of any other year, an employer who pays total Ontario remuneration for the year that does not exceed the prescribed amount for the year;

“total Ontario remuneration”, in respect of an employer, means the total remuneration paid,

- (a) to or on behalf of all of the employees of the employer who report for work at a permanent establishment of the employer in Ontario, and
- (b) to or on behalf of all of the employees of the employer who are not required to report for work at a permanent establishment of the employer but whose remuneration is paid from or through a permanent establishment of the employer in Ontario;

“Treasurer” means Treasurer of Ontario.

(2) In this Act, “permanent establishment” includes any fixed place of business, including an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse and a workshop and, without limiting the generality of the foregoing,

Permanent
establishment

- (a) a corporation has a permanent establishment in the place designated in its charter or by-laws as being its head office;
- (b) a person shall be deemed to have a permanent establishment in a jurisdiction in which the person carries on business through an employee or an agent either of whom has general authority to contract for the person;
- (c) a person shall be deemed to have a permanent establishment in a jurisdiction in which an employee or agent of the person has a stock of merchandise owned by the person from which the employee or agent fills orders received by the employee or agent;
- (d) land or premises owned or leased by an employer is a permanent establishment of the employer;
- (e) an employer shall be deemed to have a permanent establishment in the place where and at the time when the employer uses substantial machinery or equipment;
- (f) an insurance corporation has a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business;
- (g) an employer, who does not otherwise carry on business in Canada in a year, has a permanent establishment at any place where the employer produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, anything in Canada, whether or not the employer exports that thing without selling it prior to exportation; and
- (h) an employer who has no fixed place of business shall be deemed to have a permanent establishment in the principal place in which the employer conducts business and in each place from which the employer carries on or transacts a substantial portion of the business.

Tax

2.—(1) Every employer shall pay to the Crown in right of Ontario a tax calculated in accordance with this Act.

Calculation of tax

(2) The amount of the tax payable by an employer for a year is an amount equal to the product of the total Ontario remuneration paid by the employer during the year multiplied by,

- (a) where the total Ontario remuneration paid by the employer during the year does not exceed \$200,000, a rate of 0.98 per cent;
- (b) where the total Ontario remuneration paid by the employer during the year exceeds \$200,000 but does not exceed \$400,000, the rate set out in the Table opposite the range of remunerations which includes the total Ontario remuneration paid by the employer during the year; or
- (c) where the total Ontario remuneration paid by the employer during the year exceeds \$400,000, a rate of 1.95 per cent.

TABLE

Total Ontario Remuneration	Rate
More than \$200,000 to and including \$230,000	1.101 per cent
More than \$230,000 to and including \$260,000	1.223 per cent
More than \$260,000 to and including \$290,000	1.344 per cent
More than \$290,000 to and including \$320,000	1.465 per cent
More than \$320,000 to and including \$350,000	1.586 per cent
More than \$350,000 to and including \$380,000	1.708 per cent
More than \$380,000 to and including \$400,000	1.829 per cent

Amounts included in total Ontario remuneration

(3) In determining the tax payable under this Act by any person, a payment made by the person, including a payment in kind, may be deemed by the Minister to be part of the total Ontario remuneration paid by the person where,

- (a) the payment is made to an employee of the person, a former employee of the person or another person who, at the time of the payment, did not deal at arm's length (within the meaning of section 251 of the *Income Tax Act* (Canada)) with an employee or former employee of the person; and
- (b) it is reasonable for the Minister to consider that the payment is made by the person in consideration for services rendered to the employer by the employee, former employee or the other person who did not

deal at arm's length with an employee or former employee of the person.

(4) No person otherwise subject to tax under this Act is exempt therefrom by reason of an exemption granted to the person, or to or in respect of the personal or real property of the person, by or under any other Act unless the other Act expressly mentions this Act.

Exemptions
under other
Acts

3.—(1) Every employer shall pay monthly instalments to the Treasurer at the prescribed time or times on account of the tax payable for the year under this Act by the employer.

Instalments

(2) Despite subsection (1), a small employer for the year shall pay quarterly instalments to the Treasurer at the prescribed time or times on account of the tax payable for the year under this Act by the small employer.

Small
employer

(3) The amount of an instalment under subsection (1) or (2) shall be determined according to the following formula:

Amount

$$I = T \times R$$

Where:

I is the amount of the instalment in dollars;

T is the total Ontario remuneration paid by the employer during the month or the quarter, as applicable, last ending before the date the instalment is required to be paid;

R is the rate under section 2 that would apply if the total Ontario remuneration paid by the employer for the year was equal to,

- (a) in the case of a monthly instalment, twelve times the total Ontario remuneration paid by the employer for the month immediately preceding the date on which the employer is required to pay the instalment; or
- (b) in the case of a quarterly instalment, four times the total Ontario remuneration paid by the employer for the quarter immediately preceding the date on which the employer is required to pay the instalment.

(4) Every employer shall remit to the Minister each instalment of tax that the employer is required to pay under this

Remittance
of instalment
and
statement

Act together with a statement in a form approved by the Minister setting out the amount of the instalment, the amount of total Ontario remuneration upon which the instalment is calculated and such other information as may be required by the Minister for the purposes of this Act.



When
remitted or
paid

(5) Any amount required by this Act to be remitted to the Minister or paid to the Treasurer is remitted or paid upon,

- (a) receipt of the remittance or payment by the Ministry of Revenue;
- (b) receipt and acceptance of the remittance or payment by a branch of a bank or other financial institution that accepts and undertakes to forward to the Minister such remittances and payments.

Prescribed
times for
1990

(6) For the purposes of this section, the prescribed time at which an employer shall pay instalments to the Treasurer on account of the tax payable by the employer under this Act for 1990 is,

- (a) the 15th day of each month in 1990 if the employer is required to make monthly instalments on account of the tax payable for 1990; and
- (b) the 15th days of April, July and October, 1990, and the 15th day of January, 1991, if the employer is a small employer for 1990.

Formula

(7) Despite subsection (3), in applying the formula contained in that subsection to determine the amount of the monthly instalment that may be payable by an employer on January 15, 1990, "T" may be read as the total Ontario remuneration paid by the employer during December, 1989 or the total Ontario remuneration that has been or will be paid by the employer during January, 1990.



Definition

4.—(1) In this section, "Ontario resident" means a person who has a permanent establishment in Ontario.

Deemed
employer

(2) An Ontario resident who enters into an agreement with a non-resident employer under which work is performed or services are provided during a year for the benefit of the Ontario resident by an individual employed by the non-resident employer, the Ontario resident shall be deemed to be the employer of the individual and the individual shall be deemed to be an employee of the Ontario resident during any period in the year when the work is performed or the services are provided, if,

- (a) the non-resident employer does not have a permanent establishment in Ontario during the period and is not subject to tax under this Act calculated by reference to remuneration paid to the individual performing the work or providing the services for the benefit of the Ontario resident during the period;
- (b) the work is performed or the services are provided in Ontario;
- (c) the Ontario resident and the non-resident employer do not deal at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), at any time during the period or did not deal at arm's length at the time they entered into the agreement or arrangement; and
- (d) the work being performed or the services being provided by the individual for the benefit of the Ontario resident are under the approval and direction of the Ontario resident and are of a nature which, in the Minister's opinion, could be expected to be carried out by an employee of a person for whose benefit the work is performed or the services are provided.

R.S.C. 1952,
c. 148

(3) Where an Ontario resident referred to in subsection (2) is deemed by that subsection to be the employer of an individual employed by a non-resident employer during a period in a year,

Deemed
payment of
remuneration

- (a) the Ontario resident shall be deemed to pay remuneration to the individual during the period in which the individual is deemed to be an employee of the Ontario resident in an amount equal to the remuneration paid or to be paid by the non-resident employer to the individual in respect of the work performed or the services provided by the individual in the period for the benefit of the Ontario resident; and
- (b) the individual shall be deemed to be an employee who reports for work at a permanent establishment of the Ontario resident in Ontario.

5.—(1) Every employer who is liable to pay tax under this Act for a year shall deliver to the Minister on or before the prescribed date a return in a form approved by the Minister setting out the total Ontario remuneration paid or deemed to

Annual
returns

have been paid by the employer for the year, the amount of tax payable for the year under this Act and such other information as may be required by the Minister for the purposes of this Act.

Cessation of permanent establishment

(2) An employer who ceases to have a permanent establishment in Ontario before the end of a year shall deliver the return required under subsection (1) for the year to the Minister on or before the prescribed day.

Certification of return

(3) Every employer shall ensure that each return delivered under this section is verified by a certificate that states that the information contained in the return is true and correct and that is signed by the employer, by a duly authorized officer of the employer or, in the case of an employer having its head office outside Ontario, by the manager or chief agent of the employer in Ontario or by such other person or persons having knowledge to the satisfaction of the Minister of the matters required to be disclosed in the return.

Supplemental return

(4) The Minister may at any time require an employer to deliver to the Minister a return in respect of any period of time setting out such information as the Minister may specify for the purposes of this Act.

Unpaid tax

(5) The Minister may require the employer to remit to the Minister with the return under subsection (4) any tax under this Act that was not previously paid in respect of the period.

Extension of time

(6) The Minister may extend the time for delivering a return or paying an amount required to be paid under this Act, with or without interest.

Returns by trustees in bankruptcy, etc.

(7) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of an employer shall, if the employer has not delivered a return under this section for a year, deliver the return for the employer on or before the date required under this section.

Balance of tax

(8) Every employer or person referred to in subsection (7) shall remit to the Minister the balance of tax, if any, payable under this Act by the employer in respect of a year at the time the return under this section is required to be delivered.

Refunds

6.—(1) If the return required to be delivered by an employer under this Act has been delivered, the Minister,

- (a) may refund without application therefor any overpayment made on account of the tax payable under this Act for the year; and
- (b) shall make such a refund if application therefor has been made in writing to the Minister within four years from the day on which the return was required to be delivered under section 5.

(2) Instead of making a refund under subsection (1), the Minister may, where the employer is liable or is about to become liable to make a payment under this Act or under any other Act administered by the Minister, apply the amount of the overpayment to the liability and in such case the Minister shall notify the employer that such action was taken.

Application
to other
liability

7.—(1) Where, on a particular date, the aggregate of the debt payable by an employer under this Act and all amounts which were at any time refunded to the employer or applied under this Act exceed the aggregate of all payments previously made by the employer under this Act, the employer shall be charged interest payable to the Treasurer at the prescribed rate and calculated in the prescribed manner on the amount of such excess from that date to the date the amount of such excess amount is received by the Minister.

Interest

(2) Where, on a particular date, the aggregate of all payments previously made by an employer under this Act exceeds the aggregate of the debt payable by the employer under this Act as of that date and all amounts which were at any time refunded to the employer or applied under this Act, the Minister shall pay, credit or apply under this Act interest on the amount of such excess at the prescribed rate and calculated in the prescribed manner from that date to the date the amount of the excess is refunded to the employer or applied in accordance with this Act.

Interest paid

(3) Interest under this section shall be computed and compounded monthly to the date on which it is paid, refunded or applied under this Act.

Compound
interest

(4) In this section, the amount of the debt, if any, payable by an employer under this Act at a particular date is the amount by which,

Amount of
debt

- (a) the aggregate of,
 - (i) all instalments of tax under this Act payable by the employer before the date with respect to the current and all prior years,

- (ii) the amount, if any, by which the total amount of tax payable by the employer under this Act for all years ending before the date exceeds the aggregate of all instalments of tax payable by the employer under this Act in those years,
- (iii) all penalties assessed under this Act against the employer at any time before the date, and
- (iv) the aggregate of all amounts each of which is an amount of interest charged under this section to the employer in respect of a period of time ending before the date,

exceeds,

(b) the aggregate of,


- (i) the amount, if any, by which the aggregate of all instalments payable by the employer under this Act in a year ending before the date exceeds the total amount of tax payable by the employer under this Act for those years, and
- (ii) the aggregate of all amounts each of which is an amount of interest credited to the employer in respect of a period of time ending before the date.



Determi-
nation of
prescribed
rate

(5) For the purposes of this Act, unless a regulation has been made and filed under clause 38 (1) (c), the prescribed rate of interest payable per year shall be determined using the following rules:

1. The rate of interest shall be reviewed semi-annually and adjusted effective the 1st day of April and the 1st day of October in each year and shall remain in force until the next adjustment date.
2. If the interest adjustment date is the 1st day of April, the rate of interest shall be the mean rate rounded to the nearest whole percentage point of the lowest interest rates charged to their most-credit-worthy borrowers for prime business loans by the Royal Bank of Canada, the Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and the Toronto-Dominion Bank on the immediately preceding 15th day of January.

3. If the interest adjustment date is the 1st day of October, the rate of interest shall be the mean rate rounded to the nearest whole percentage point of the lowest interest rates charged to their most-credit-worthy borrowers for prime business loans by the Royal Bank of Canada, the Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and the Toronto-Dominion Bank on the immediately preceding 15th day of July.
4. For the period from the 1st day of January, 1990 to the 31st day of March, 1990, the rate of interest under this Act shall be 14 per cent per year. 

8.—(1) The Minister may assess the tax, interest or penalties payable in respect of a year under this Act, Tax assessments

- (a) at any time, if the employer or person delivering the return for the year under this Act,
 - (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in delivering the return or in supplying any information under this Act or in omitting to disclose any information, or
 - (ii) has filed with the Minister a waiver in a form approved by the Minister on or before the expiry of the time provided in clause (b); and
- (b) within four years from the later of the day on which the return required under this Act to be delivered was received by the Minister and the day the return was required to be delivered to the Minister.

(2) Where the Minister assesses tax, interest or penalties under subsection (1), the Minister shall send a notice of assessment to the person liable to pay the amount assessed. Notice of assessment

(3) Liability for tax or interest payable under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. Continuation of liability

(4) The Minister is not bound by a statement, a return or information delivered under this Act by or on behalf of any person and may assess the tax and any interest and penalties payable under this Act whether or not a return has been delivered and despite the contents of any return or information delivered to the Minister. Minister not bound by returns

Assessment
valid and
binding

(5) An assessment, subject to being varied or vacated on an objection or appeal and subject to further assessment, shall be deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding under this Act related to the assessment.

Payment of
assessment

(6) Every employer shall, within thirty days from the date of sending of an assessment, pay any assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or an appeal from the assessment is outstanding.

Payment
forthwith

(7) The Minister may direct that all taxes, interest and penalties then remaining unpaid by an employer on the day of sending of a notice of assessment be paid forthwith by the employer where,

(a) the Minister is of the opinion that the employer is attempting to avoid payment of the taxes, interest or penalties; or

(b) the Minister made the assessment after the employer failed to deliver a return required under this Act or delivered an incomplete or inaccurate return.

Objection to
tax
assessment

9.—(1) An employer who objects to an assessment made under section 8 may, within 180 days from the day of sending of the notice of assessment, serve on the Minister a notice of objection in duplicate in the form approved by the Minister setting out the reasons for the objection and all relevant facts.

Service of
notice of
objection

(2) Service of a notice of objection under this section shall be by registered mail addressed to the Minister or by such other method as is prescribed.

Acceptance
of notice

(3) The Minister may accept a notice of objection under this section even though the notice was not served in the manner required by subsection (2).

Extension of
time

(4) The time within which a notice of objection is to be served may be extended by the Minister if application for the extension is made within one year from the day of mailing of the notice of assessment which is the subject of the objection.

Minister's
duty to
reconsider

(5) Upon receipt of the notice of objection, the Minister shall, as quickly as possible, reconsider the assessment and vacate, confirm or vary the assessment.

Notice of
decision

(6) The Minister shall notify the employer by registered mail or in the prescribed manner as to the action taken by the

Minister under subsection (5) as quickly as possible after taking the action.

(7) An assessment made by the Minister under this section is not invalid by reason only that it is not made within the time required under section 8.

Time

(8) An assessment by the Minister in respect of tax, interest or penalties that relates to the same year in relation to which a notice of objection to assessment is delivered to the Minister or an appeal from assessment is commenced in accordance with this Act does not invalidate the objection or appeal.

Subsequent assessment not to invalidate

10.—(1) An employer who has served a notice of objection to an assessment under this Act may appeal the assessment, as vacated, confirmed or varied by the Minister, to the Supreme Court.

Appeal from assessment

(2) No appeal under subsection (1) may be commenced more than ninety days after the date on which notice is given to the employer that the Minister has vacated, confirmed or varied the assessment.

Time

(3) An appeal shall be commenced by serving on the Minister a notice of appeal in duplicate in a form approved by the Minister and filing a copy of the notice with the Registrar of the Supreme Court or the local registrar of the Supreme Court for the district in which the employer appealing has a permanent establishment.

Manner

(4) A notice of appeal shall be served upon the Minister by registered mail or in a prescribed manner.

Service

(5) The Minister may extend the time for commencing an appeal if application for the extension is made before the expiration of the time specified in this section.

Extension of time

(6) The employer appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons the employer intends to submit in support of the appeal.

Contents

(7) The Minister shall, as quickly as possible, serve on the employer and file with the court a reply to the notice of appeal admitting or denying the facts alleged and stating such further allegations of fact and all statutory provisions and reasons that the Minister intends to rely on.

Reply

(8) Where the Minister does not file the reply within 180 days from the date of service of the notice of appeal upon the

Application

Minister, the employer may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the Minister to serve and file the reply within such time as the judge may order.

Order (9) Upon an application under subsection (8), the judge may, if the judge considers it proper in the circumstances, order also that upon the failure of the Minister to serve and file the reply in the time specified in the order, the assessment or part thereof, as the case may be, with respect to which the appeal is taken shall be vacated and any tax paid pursuant to such assessment or the part thereof shall be repaid to the employer.

Revival (10) Nothing in this section revives an appeal that is void or affects an assessment that has become valid and binding under this Act.

Action **11.**—(1) Upon the filing of the notice of appeal and reply in the Supreme Court in accordance with section 10, the matter shall be deemed to be an action in the Supreme Court and the practice and procedure of the Supreme Court, including the right of appeal, and the practice and procedure relating to appeals, apply to the action.

Enforcement (2) Every judgment or order given or made in the action may be enforced in the same manner and by the same process as a judgment or order in an action commenced in the Supreme Court.

Irregularity (3) An assessment shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.

Powers of court (4) The court may dispose of an appeal by dismissing it, allowing it, or by allowing it and,

(a) vacating the assessment;

(b) varying the assessment;

(c) restoring the assessment; or

(d) referring the assessment back to the Minister for reconsideration and reassessment.

Order for payment (5) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax, interest, penalties or

costs by the employer or the Minister, as the court considers appropriate.

12.—(1) Every employer required by this Act to pay tax shall keep records and books of account at a permanent establishment in Ontario of the employer or at such other place as is designated by the Minister.

Records and
books of
account

(2) Every employer required by subsection (1) to keep records and books of account shall keep the records and books of account in such form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with.

Form and
content

(3) The Minister may require an employer who has failed to keep records and books of account that comply with subsections (1) and (2) to keep such records and books of account as the Minister specifies.

Failure to
keep records

(4) Every employer required by this section to keep records and books of account shall, until permission for their disposal is given by the Minister, retain each such record and book of account and every primary source document required to support and verify the entries and information in the records and books of account.

Retention of
records

13.—(1) The Minister may appoint in writing one or more persons as inspectors for the purposes of this Act.

Audits

(2) An inspector may at any reasonable time, without a warrant, enter any place of business of an employer to make an inspection to ensure that there is compliance with this Act and the regulations.

Entry and
inspection

(3) Upon an inspection under this section, the inspector,

Powers on
inspection

- (a) has the right to inspect the premises and the operations carried out on the premises;
- (b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant for the purposes of the inspection, regardless of the form or medium in which such books, documents, correspondence and records are kept, but, if they or any of them are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;

- (c) has the right to question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination; and
- (d) has the right to test the accuracy and integrity of computer programs used in processing information relevant to determining any amount payable under this Act.

Obstruction
of inspector

14. No person shall obstruct an inspector or withhold or conceal from an inspector any book of account, document, correspondence or record, including any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act.

Demand for
information

15.—(1) The Minister may, for the purpose of the administration or enforcement of this Act, by a written notice require from an employer or from a director, employee or agent of an employer, or from any other person,

- (a) any information or additional information or any required or prescribed form; or
- (b) production, or production on oath or affirmation, of books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant to the administration or enforcement of this Act.

Time for
production

(2) A notice under subsection (1) may require that the information or production be given or produced within such reasonable time as is specified in the letter or demand.

Copies of
documents

16. A copy of a book of account, document, correspondence or record, or any part of any of them, certified by an inspector or an employee of the Ministry to be a true copy of the original shall be received in evidence in any proceeding to the same extent and have the same evidentiary value as the material of which it is a copy.

Adminis-
tration of
oaths

17. Any officer or employee of the Ministry who is authorized by the Minister may administer oaths and take or receive affidavits, declarations or affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits.

18.—(1) In this section, “institution” means a bank, credit union, trust company or other similar organization. Garnishment

(2) Where the Minister has knowledge or suspects that a person is or will be, within ninety days, liable to make a payment to an employer who is liable to make a payment under this Act, the Minister may, by a written notice, require the person to pay forthwith, where the moneys are immediately payable, and, in any other case, as and when the moneys become payable, the moneys otherwise payable to the employer in whole or in part to the Treasurer on account of the employer’s liability under this Act. Notice by Minister

(3) Despite subsection (2), where the Minister has knowledge or suspects that within ninety days, Idem

- (a) an institution will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by an employer who is indebted to the institution and who has granted security in respect of the indebtedness; or
- (b) a person other than an institution will loan or advance moneys to, or make a payment on behalf of, an employer who the Minister knows or suspects,
 - (i) is engaged in providing services or property to that person, or was or will be within ninety days, or
 - (ii) where that person is a corporation which is not dealing at arm’s length with the employer,

the Minister may, by a written notice, require the institution or the person, as the case may be, to pay in whole or in part to the Treasurer, on account of the employer’s liability under this Act, the moneys that would otherwise be loaned, advanced or paid, and any moneys paid to the Treasurer shall be deemed to have been loaned, advanced or paid, as the case may be, to the employer.

(4) Where, under this section, the Minister has required a person to pay to the Treasurer moneys otherwise payable by the person to an employer as interest, rent, a dividend, an annuity payment, or other periodic payment, Idem

- (a) the requirement shall apply to all such periodic payments to be made by the person to the employer

after the date of receipt by the person of the Minister's letter, until the employer's liability under this Act has been satisfied; and

- (b) the payments required to be made to the Treasurer shall be made from each such periodic payment in the amount or amounts designated in the Minister's letter.

Receipt of
the Treasurer

(5) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability for
failure to
comply

(6) Every person who fails to comply with a requirement under subsection (2), (3) or (4) is liable to pay to the Crown in right of Ontario an amount equal to the amount that the person was required under subsection (2), (3) or (4), as applicable, to pay to the Treasurer.

Idem

(7) Every institution or person who fails to comply with a requirement under subsection (2), (3) or (4) with respect to moneys to be loaned, advanced or paid is liable to pay to the Crown in right of Ontario an amount equal to the lesser of,

- (a) the aggregate of moneys so loaned, advanced or paid; or
- (b) the amount that the institution or person was required by subsection (2), (3) or (4) to pay to the Treasurer.

Application
of
R.S.O. 1980,
c. 526

(8) This section is subject to the *Wages Act*.

Liability of
receivers,
etc.

19.—(1) Every trustee or other person required by this Act to file an annual return for an employer in respect of a year shall, within thirty days from the day of mailing of a notice of assessment issued by the Minister, pay all taxes, interest and penalties payable under this Act by the employer to the extent that the person has or had, at any time since the year, in his or her possession or control property belonging to the employer or the estate of the employer and shall thereupon be deemed to have made the payment on behalf of the employer.

Certificate of
taxes paid

(2) Every assignee, liquidator, receiver, receiver-manager and other agent, other than a trustee in bankruptcy, before distributing any property of the employer under such person's control, shall obtain a certificate from the Minister certifying that all taxes, interest and penalties that have been assessed

under this Act and are chargeable against or payable out of the property of the employer have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under this Act.

(3) Any person referred to in subsection (2) who fails to obtain the certificate referred to therein is personally liable to the Crown in right of Ontario for an amount equal to the taxes, interest and penalties under subsection (1) and such debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act.

Personal
liability of
receivers

20.—(1) Upon default of payment by an employer of any tax, interest or penalty imposed by this Act,

Recovery of
tax, interest
and penalties

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office, may be continued by his or her successor in office as if no change had occurred and shall be tried without a jury;
- (b) the Minister may issue a warrant, directed to the sheriff of the district where any property of the employer is located or situate, for the amount of tax, interest and penalty or any of them owing by the employer, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court of Ontario.

(2) The Minister may, if the Minister considers it advisable, accept security for the payment of taxes by an employer by way of a mortgage or other charge of any kind upon the property of the employer or of any other person, or by way of a guarantee of the payment of the taxes by another person.

Security

(3) The Minister is entitled to recover from an employer the reasonable costs and charges incurred in the course of obtaining payment of taxes, interest or penalties owed by the employer under this Act in connection with,

Costs

- (a) the service of a notice or other document;

- (b) the bringing of an action for the recovery of tax, interest and penalties; or
- (c) the issuance and execution of a warrant referred to in clause (1) (b) to the extent not recovered by the sheriff upon execution thereof.

Idem

(4) For the purpose of collecting debts owed by an employer to the Crown in right of Ontario under this Act, the Minister may purchase or otherwise acquire any interest in the property of an employer that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and the Minister may dispose of an interest so acquired in such manner as the Minister considers reasonable.



Out-of-province employer

21.—(1) In this section, “out-of-province employer” means an employer who does not ordinarily maintain a permanent establishment in Ontario but will establish a permanent establishment in Ontario for a period not exceeding twenty-four months.

Security

(2) Before establishing a permanent establishment in Ontario, an out-of-province employer shall provide security to the Minister for the tax which may become payable by him or her under this Act and shall obtain a certificate in duplicate from the Minister that the requirements of this section have been met.

Form of security

(3) The security referred to in subsection (2), and any security in replacement thereof, shall be in a form and of a kind acceptable to the Minister, and the Minister may demand additional or replacement security from time to time if the Minister considers that the original security is insufficient in relation to the out-of-province employer’s liabilities which will arise under this Act.

Waiver by Minister

(4) In the certificate issued under subsection (2), or in any replacement thereof issued after a request by the out-of-province employer, the Minister may waive the requirement that the out-of-province employer provide security if the Minister is satisfied at the time the certificate or replacement certificate is issued that,

- (a) the out-of-province employer will be maintaining a permanent establishment in Ontario for more than twenty-four consecutive months after the issuance of the certificate; or

- (b) the total Ontario remuneration in respect of the out-of-province employer for the year in which the certificate or replacement certificate is issued and for all subsequent years in which the out-of-province employer will be maintaining a permanent establishment in Ontario will be nil.

(5) Any person making a payment to an out-of-province employer without first obtaining the duplicate copy of the certificate to be issued under this section shall,

Duty of person making payment to out-of-province employer

- (a) deduct 1.95 per cent of all amounts payable to the out-of-province employer and pay such amount to the Treasurer on behalf of or as agent for the out-of-province employer on account of tax payable by the out-of-province employer under this Act; or
- (b) provide security in a form and of a kind acceptable to the Minister for 1.95 per cent of the total amount payable to the out-of-province employer to secure payment of the tax payable by the out-of-province employer under this Act.

(6) If a person dealing with an out-of-province employer fails to comply with subsection (5), the person is personally liable for payment of that portion of the tax imposed by this Act each year on the out-of-province employer that is determined in accordance with the following formula:

Liability

$$L = T \times (A/R)$$

where:


L is the amount of the liability of the person for the year under this subsection, expressed in dollars;

T is the total amount of tax payable by the out-of-province employer for the year;

A is the portion of the total Ontario remuneration for the year paid by the out-of-province employer in connection with carrying out the terms of all contracts between the person and the out-of-province employer; and

R is the total Ontario remuneration for the year paid by the out-of-province employer.

Computation
of interest

(7) For the purposes of computing interest payable to any person under section 7, any cash deposit paid to the Minister to be held as security under this section shall be considered to be a payment made under this Act, but nothing in this section relieves an out-of-province employer from the requirement to pay instalments under section 3 or any other amount required by this Act to be paid. 

Compromises

22. Where there is uncertainty as to the liability of an employer to pay any tax imposed under this Act, or where, owing to special circumstances, it is inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as the Minister considers proper in satisfaction of any tax, interest and penalties under this Act.

Notice of
sale of assets

23.—(1) Where an employer has failed to pay taxes, interest and penalties or any of them imposed by this Act for a period of more than three years from the date of sending of a notice of assessment under this Act, no person shall sell any property of the employer unless the person has given written notice by registered letter to the Minister not less than ten days before the date of the sale.

Penalty

(2) Every person who contravenes subsection (1) is liable to a penalty of not less than an amount equal to the amount of the taxes, interest and penalties owed by the employer on the date of the sale.

Remedies

24.—(1) The use of a remedy provided by this Act does not bar or affect any of the other remedies provided by this Act.

Additional
remedies

(2) The remedies provided by this Act for the recovery or enforcement of the payment of any tax, interest and penalty or any of them imposed by this Act are in addition to any other remedies existing by law.

Priorities

25. No action or other proceeding taken under this Act in any way prejudices, limits or affects any charge or priority existing under this Act or otherwise.

Proof by
affidavit

26. For the purpose of a proceeding under this Act, an affidavit by the Minister or an officer of the Ministry is, in the absence of evidence to the contrary, proof of the facts set out in the affidavit without proof of the signature or office of the Minister or officer of the Ministry.

Confiden-
tiality

27. Every person employed in the administration or enforcement of this Act or in the development and evaluation

of tax policy for the Government of Ontario shall preserve secrecy with respect to all matters related to this Act that come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person except,

- (a) as may be required in connection with the administration or enforcement of this Act, any other Act administered by the Minister or the *Income Tax Act* (Canada) or the regulations made under any of them; R.S.C. 1952,
c. 148
- (b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario;
- (c) with the consent of the person to whom the information or material relates;
- (d) to counsel for the person required by this section to preserve secrecy.

28. The Minister may, for the purpose of administering this Act, enter into an agreement with the Government of Canada or the government of any other province or territory of Canada under which such government will be allowed access to information obtained under this Act and the Minister will be allowed access to information obtained under any Act of such government. Exchange of
information

29.—(1) Any notice or other document required by this Act to be served or given may be served personally, may be sent by registered mail addressed to the person to whom the notice or other document is to be served or given at the last known address of the person or may be served in the prescribed manner. Service of
documents

(2) A notice by the Minister under this Act is validly addressed, Address

- (a) to a person, if addressed to the person in the name or style under which the person carries on business;
- (b) to persons who carry on business in partnership, if addressed to the partnership.

(3) A notice by the Minister under this Act is validly served, Personal
service

- (a) upon a person, if left with an adult person employed at the place of business of the person to whom the notice is addressed;
- (b) upon persons who carry on business in partnership, if served on one of the partners or left with an adult person employed at the place of business of the partnership.

Registered
mail

(4) A notice or other document sent by registered mail in accordance with subsection (1) shall be deemed to have been served or given on the fifth day after the day of mailing unless the person to whom the notice or other document is sent establishes that, although acting in good faith, he or she did not receive the notice or did not receive the notice until a later date.

Delivery to
Minister

(5) A return or other document under this Act that is delivered to the Minister shall be deemed to be delivered on the day it is received by the Minister.

Penalties,
failure to
deliver return

30.—(1) Every person who fails to deliver a return or statement at the time and in the manner required by this Act or the regulations shall pay a penalty of an amount equal to 10 per cent of the tax or of the instalment on account of tax unpaid on the date the return or statement was required to be delivered, but such penalty shall not be less than \$50 and not more than \$2,500.

Failure to
complete
return

(2) Every employer who fails to complete the information required on a return or statement is liable to a penalty of the greater of 1 per cent of tax or of the instalment on account of tax payable by the employer under this Act or \$50, up to a maximum of \$200.

False
statement

(3) Where a person, acting or purporting to act on behalf of an employer, knowingly, or in circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes or participates in, assents to or acquiesces in the making of, an incorrect statement or an omission in a return, certificate or other document delivered or made as required by or under this Act or the regulations, the employer is liable to a penalty of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable under this Act if the remuneration paid during the year had been computed by adding to the remuneration reported in the return, certificate or other document for the year that portion of the understate-

ment of remuneration for the year which is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by the employer under this Act had the tax payable for the year been calculated on the basis of the information provided in the return, certificate or other document.

31.—(1) Every person who makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer or other document delivered or made as required by or under this Act or the regulations is guilty of an offence. Offences,
statements

(2) Every person who, to evade payment of the tax imposed by this Act, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of an employer is guilty of an offence. Idem,
records

(3) Every person who makes, assents to or acquiesces in the making of false or deceptive entries in records or books of account of an employer is guilty of an offence. Idem

(4) Every person who omits, or assents to or acquiesces in the omission, to enter a material particular in records or books of account of an employer is guilty of an offence. Offences,
material facts

(5) Every person who wilfully in any manner evades or attempts to evade compliance with this Act or payment of the tax imposed by this Act is guilty of an offence. Offence,
compliance

(6) Every person who conspires with any other person to commit an offence described in subsections (1) to (5) is guilty of an offence. Offence,
conspiracy

(7) Every person who is guilty of an offence under subsection (1), (2), (3), (4), (5) or (6), in addition to any other penalty, is liable on conviction to, Punishment

- (a) a fine of not less than the greater of \$500 and 25 per cent of the amount of the tax that should have been shown to be payable or that was sought to be evaded and not more than double the amount of the tax which should have been shown to be payable or which was sought to be evaded;

(b) imprisonment for a term of not more than two years; or

(c) both a fine under clause (a) and imprisonment under clause (b).

Offence,
failure to
deliver return

32. Every employer who fails to deliver a return at the time and in the manner required by this Act or the regulations is guilty of an offence and, in addition to any other penalty, is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Offence,
records and
books of
account

33.—(1) Every person who fails to keep records and books of account in accordance with this Act and the regulations is guilty of an offence.

Idem

(2) Every person who fails to keep such records and books of account as the Minister specifies under subsection 12 (3) is guilty of an offence.

Idem

(3) Every person who fails to retain records, books of account and source documents required by this Act until permission for disposal is given by the Minister is guilty of an offence.

Fine

(4) Every person who is guilty of an offence under subsection (1), (2) or (3) is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Offence,
obstruction

34. Every person who obstructs an inspector or withholds or conceals from an inspector any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$5,000 on a first conviction and not less than \$100 and not more than \$10,000 on each subsequent conviction.

General
offence

35. Every person who contravenes or fails to comply with any provision of this Act or the regulations is guilty of an offence and on conviction, where no other fine is provided in this Act, is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000.

Officers, etc.,
of
corporations

36. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is guilty of the offence

and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

37. Proceedings for an offence under this Act or the regulations shall not be commenced after six years after the date on which the offence was, or is alleged to have been, committed. Limitation

38.—(1) The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) defining any word or expression in this Act that has not been expressly defined in this Act;
- (c) prescribing rates of interest for the purposes of this Act or a formula for computing the rates and the method of calculating the interest;
- (d) requiring or permitting the payment of instalments on account of tax payable under this Act at times and with respect to time periods other than as required under section 3, and providing for the method of determining the amount of such instalment payments;
- (e) requiring or permitting the determination of the amount of an instalment payment in a manner other than as required under section 3;
- (f) prescribing persons or classes of persons who will be exempt from the payment of tax and from the requirement to make instalment payments under this Act;
- (g) prescribing classes of individuals or employees whose remuneration shall be deemed not to form part of total Ontario remuneration paid by an employer or a class of employers;
- (h) providing for a rebate of tax in whole or in part and prescribing the terms and conditions under which such rebates shall be made and the method of determining the amount of such rebate.

(2) The Minister may make regulations,

Minister

- (a) prescribing forms that, in the opinion of the Minister, will assist in the administration of this Act and requiring the use of such forms;
- (b) prescribing how and by whom forms required by this Act or prescribed forms shall be completed;
- (c) prescribing what information shall be set out in forms required by this Act or in prescribed forms.

Retroactivity
R.S.O. 1980,
c. 446

(3) A regulation is, if it so provides, effective with reference to a period before it is filed under the *Regulations Act*.

The Crown

39. This Act binds the Crown.

Question-
naires

40. The Minister may for any purpose related to the administration of this Act request information from any employer by way of a questionnaire, and every employer shall respond within such reasonable time as is specified in the request.

41.—(1) Clause 4 (2) (b) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by striking out “and collection of premiums” in the second and third lines.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

Transitional

(3) Every person is entitled to become an insured person without payment of a premium upon application to the General Manager in the form provided by the General Manager if the person, after the 31st day of December, 1989 and before the 1st day of April, 1990,

- (a) becomes a resident of Ontario; or
- (b) is a resident of Ontario and ceases to be a member of a class designated by the regulations.

(3) Section 12 of the said Act is amended by striking out “during the period in respect of which his premium is paid or dispensed with under this Act” in the fourth, fifth and sixth lines.

(4) Sections 13, 14 and 15 of the said Act are repealed.

(5) Sections 16, 17 and 18 of the said Act are repealed.

(6) Clause 26 (1) (b) of the said Act is repealed.

(7) Clause 28 (a) of the said Act is amended by striking out “or (b)” in the first line.

(8) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

(1) Any person designated in writing by the General Manager may enter the premises of a person or organization that was an employer of a mandatory group before the 1st day of January, 1990 or of a person who was a collector under this Act before that date and inspect the books of account, payroll records and other records for the purpose of obtaining information relating to the membership of the group. Inspections

(9) Subsection 47 (1) of the said Act is amended by striking out “fails” in the second line and inserting in lieu thereof “has failed”.

(10) Subsection 47 (3) of the said Act is amended by striking out “concur” in the second line and inserting in lieu thereof “has concurred”.

(11) Section 48 of the said Act is amended by striking out “Where an employer or collector that is a corporation fails” in the first and second lines and inserting in lieu thereof “Where a person or organization that was an employer before the 1st day of January, 1990, or a person that was a collector before that date and that is a corporation, has failed”.

(12) Clauses 51 (1) (c), (d) and (e) of the said Act are repealed.

(13) Clauses 51 (1) (g) and (h) of the said Act are repealed.

(14) Clause 51 (1) (o) of the said Act is amended by striking out “in addition to the payment of the premiums” in the second and third lines.

(15) Subsection 51 (1) of the said Act is amended by adding thereto the following clause:

(y) designating classes for the purpose of subsection 11 (3).

(16) Subsection 52 (2) of the said Act is amended by striking out “additional premium or other charge beyond that necessary to entitle him to insured services under the Plan” in the sixth, seventh and eighth lines and inserting in lieu thereof “premium or other charge”.

Commence-
ment

42.—(1) Except as provided in subsections (2) to (5), this Act comes into force on the 1st day of January, 1990.

Idem

(2) This section and sections 1, 38 and 43 come into force on the day this Act receives Royal Assent.

Idem

(3) Section 40 shall be deemed to have come into force on the 1st day of August, 1989.

Idem

(4) Subsections 41 (2), (5), (8), (9), (10), (11) and (12) come into force on the 1st day of January, 1990.

Idem

(5) Subsections 41 (1), (3), (4), (6), (7), (13), (14) and (16) come into force on the 1st day of April, 1990.

Short title

43. The short title of this Act is the *Employer Health Tax Act, 1989*.

Bill 47

An Act to impose a Tax on Employers for the purpose of providing for Health Care and to revise the requirements respecting the payment of Premiums under the Health Insurance Act

The Hon. R. Mancini
Minister of Revenue



1st Reading July 10th, 1989
2nd Reading October 26th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Finance and Economic Affairs Committee)

EXPLANATORY NOTES

The Bill implements the proposal in the Treasurer's Budget of May 17, 1989, to establish a new employer health tax to replace Ontario Health Insurance Plan premiums. The principal features of the Bill are as follows:

1. Employers having permanent establishments in Ontario will be required to pay an employer health tax at a graduated tax rate ranging from 0.98 per cent to 1.95 per cent per year, depending on the total amount of remuneration paid in the year by the employer to his or her employees.
2. The tax is imposed on employers, but is calculated by multiplying the total amount of remuneration paid by the employer to his or her employees in Ontario in the calendar year by the tax rate applicable to that amount of remuneration.
3. Employers who will be taxable at the top rate for a year will be required to make monthly instalment payments on account of the tax for the year while employers subject to the lower rates of tax will be required to make quarterly instalment payments commencing in April, 1990.
4. Employers will be required to deliver annual returns after the end of the year and remit any balance of tax payable for the year.
5. Administrative provisions similar to the provisions in other taxing statutes administered by the Minister of Revenue are contained in the Bill relating to such matters as the keeping of adequate books and records by employers, Ministry audits and tax assessments, time limits for issuing tax assessments, legal remedies to enforce collection of unpaid tax, refunds of tax overpayments, the charging of interest on overdue tax and the payment of interest on tax refunds, objections to and appeals from tax assessments and administrative penalties and offences for failure to comply with the Act.

Bill 47

1989

**An Act to impose a Tax on Employers
for the purpose of providing for Health Care and to
revise the requirements respecting the payment of
Premiums under the Health Insurance Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“assessment” includes reassessment;

“employee” means,

- (a) an individual employed by and in the service of an employer,
- (b) an individual who holds office from an employer and receives remuneration in respect of the performance of the duties of the office,
- (c) with reference to reporting for work at a permanent establishment of an employer in Ontario, an employee of the employer from whose remuneration the employer is required to deduct, withhold and remit an amount under the *Income Tax Act* on account of the tax payable by the employee under that Act or would be required to so deduct, withhold and remit if the employee's remuneration were greater;

R.S.O. 1980,
c. 213

“employer” means a person or a government, including the government of a province, a territory or Canada, who pays remuneration to an employee;

“inspector” means a person authorized by the Minister as an inspector under this Act;

“Minister” means Minister of Revenue;

“Ministry” means Ministry of Revenue;

“place of business” means a place where an undertaking or activity, including a function of government, is carried on, whether or not carried on for gain or profit;

“prescribed” means prescribed by the regulations;

“quarter”, in respect of an instalment of tax under this Act, refers to a period of three consecutive months;

“regulations” means regulations made under this Act;

R.S.C. 1952,
c. 148

“remuneration” includes all payments, benefits and allowances received or deemed to be received by an individual that, by reason of section 5, 6 or 7 of the *Income Tax Act* (Canada), are required to be included in the income of the individual for the purposes of that Act and, without limiting the generality of the foregoing, includes salaries and wages, bonuses, taxable allowances and commissions and other similar amounts fixed by reference to the volume of sales made or contracts negotiated, but does not include a pension, annuity or superannuation benefit paid by an employer to a former employee after retirement of the employee;



“small employer” means,

- (a) in respect of 1990, an employer who pays total Ontario remuneration for 1990 that does not exceed \$400,000, and
- (b) in respect of any other year, an employer who pays total Ontario remuneration for the year that does not exceed the prescribed amount for the year; ➡

“total Ontario remuneration”, in respect of an employer, means the total remuneration paid,

- (a) to or on behalf of all of the employees of the employer who report for work at a permanent establishment of the employer in Ontario, and
- (b) to or on behalf of all of the employees of the employer who are not required to report for work at a permanent establishment of the employer but whose remuneration is paid from or through a permanent establishment of the employer in Ontario;

“Treasurer” means Treasurer of Ontario.

(2) In this Act, “permanent establishment” includes any fixed place of business, including an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse and a workshop and, without limiting the generality of the foregoing,

Permanent
establishment

- (a) a corporation has a permanent establishment in the place designated in its charter or by-laws as being its head office;
- (b) a person shall be deemed to have a permanent establishment in a jurisdiction in which the person carries on business through an employee or an agent either of whom has general authority to contract for the person;
- (c) a person shall be deemed to have a permanent establishment in a jurisdiction in which an employee or agent of the person has a stock of merchandise owned by the person from which the employee or agent fills orders received by the employee or agent;
- (d) land or premises owned or leased by an employer is a permanent establishment of the employer;
- (e) an employer shall be deemed to have a permanent establishment in the place where and at the time when the employer uses substantial machinery or equipment;
- (f) an insurance corporation has a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business;
- (g) an employer, who does not otherwise carry on business in Canada in a year, has a permanent establishment at any place where the employer produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, anything in Canada, whether or not the employer exports that thing without selling it prior to exportation; and
- (h) an employer who has no fixed place of business shall be deemed to have a permanent establishment in the principal place in which the employer conducts business and in each place from which the employer carries on or transacts a substantial portion of the business.

Tax

2.—(1) Every employer shall pay to the Crown in right of Ontario a tax calculated in accordance with this Act.

Calculation of tax

(2) The amount of the tax payable by an employer for a year is an amount equal to the product of the total Ontario remuneration paid by the employer during the year multiplied by,

- (a) where the total Ontario remuneration paid by the employer during the year does not exceed \$200,000, a rate of 0.98 per cent;
- (b) where the total Ontario remuneration paid by the employer during the year exceeds \$200,000 but does not exceed \$400,000, the rate set out in the Table opposite the range of remunerations which includes the total Ontario remuneration paid by the employer during the year; or
- (c) where the total Ontario remuneration paid by the employer during the year exceeds \$400,000, a rate of 1.95 per cent.



TABLE

Total Ontario Remuneration	Rate
More than \$200,000 to and including \$230,000	1.101 per cent
More than \$230,000 to and including \$260,000	1.223 per cent
More than \$260,000 to and including \$290,000	1.344 per cent
More than \$290,000 to and including \$320,000	1.465 per cent
More than \$320,000 to and including \$350,000	1.586 per cent
More than \$350,000 to and including \$380,000	1.708 per cent
More than \$380,000 to and including \$400,000	1.829 per cent



Amounts included in total Ontario remuneration

(3) In determining the tax payable under this Act by any person, a payment made by the person, including a payment in kind, may be deemed by the Minister to be part of the total Ontario remuneration paid by the person where,

- (a) the payment is made to an employee of the person, a former employee of the person or another person who, at the time of the payment, did not deal at arm's length (within the meaning of section 251 of the *Income Tax Act* (Canada)) with an employee or former employee of the person; and
- (b) it is reasonable for the Minister to consider that the payment is made by the person in consideration for services rendered to the employer by the employee, former employee or the other person who did not

deal at arm's length with an employee or former employee of the person.

(4) No person otherwise subject to tax under this Act is exempt therefrom by reason of an exemption granted to the person, or to or in respect of the personal or real property of the person, by or under any other Act unless the other Act expressly mentions this Act.

Exemptions under other Acts

3.—(1) Every employer shall pay monthly instalments to the Treasurer, at the prescribed time or times and in the prescribed manner, on account of the tax payable for the year under this Act by the employer.

Instalments

(2) Despite subsection (1), a small employer for the year shall pay quarterly instalments to the Treasurer, at the prescribed time or times and in the prescribed manner, on account of the tax payable for the year under this Act by the small employer.

Small employer

(3) The amount of an instalment under subsection (1) or (2) shall be determined according to the following formula:

Amount

$$I = T \times R$$

Where:

- I is the amount of the instalment in dollars;
- T is the total Ontario remuneration paid by the employer during the month or the quarter, as applicable, last ending before the date the instalment is required to be paid;
- R is the rate under section 2 that would apply if the total Ontario remuneration paid by the employer for the year was equal to,
- (a) in the case of a monthly instalment, twelve times the total Ontario remuneration paid by the employer for the month immediately preceding the date on which the employer is required to pay the instalment; or
 - (b) in the case of a quarterly instalment, four times the total Ontario remuneration paid by the employer for the quarter immediately preceding the date on which the employer is required to pay the instalment.

Remittance
of instalment
and
statement

(4) Every employer shall remit to the Minister each instalment of tax that the employer is required to pay under this Act together with a statement in a form approved by the Minister setting out the amount of the instalment, the amount of total Ontario remuneration upon which the instalment is calculated and such other information as may be required by the Minister for the purposes of this Act.

Definition

4.—(1) In this section, “Ontario resident” means a person who has a permanent establishment in Ontario.

Deemed
employer

(2) An Ontario resident who enters into an agreement with a non-resident employer under which work is performed or services are provided during a year for the benefit of the Ontario resident by an individual employed by the non-resident employer, the Ontario resident shall be deemed to be the employer of the individual and the individual shall be deemed to be an employee of the Ontario resident during any period in the year when the work is performed or the services are provided, if,

- (a) the non-resident employer does not have a permanent establishment in Ontario during the period and is not subject to tax under this Act calculated by reference to remuneration paid to the individual performing the work or providing the services for the benefit of the Ontario resident during the period;
- (b) the work is performed or the services are provided in Ontario;
- (c) the Ontario resident and the non-resident employer do not deal at arm’s length, within the meaning of section 251 of the *Income Tax Act* (Canada), at any time during the period or did not deal at arm’s length at the time they entered into the agreement or arrangement; and
- (d) the work being performed or the services being provided by the individual for the benefit of the Ontario resident are under the approval and direction of the Ontario resident and are of a nature which, in the Minister’s opinion, could be expected to be carried out by an employee of a person for whose benefit the work is performed or the services are provided.

R.S.C. 1952,
c. 148

Deemed
payment of
remuneration

(3) Where an Ontario resident referred to in subsection (2) is deemed by that subsection to be the employer of an individ-

ual employed by a non-resident employer during a period in a year,

- (a) the Ontario resident shall be deemed to pay remuneration to the individual during the period in which the individual is deemed to be an employee of the Ontario resident in an amount equal to the remuneration paid or to be paid by the non-resident employer to the individual in respect of the work performed or the services provided by the individual in the period for the benefit of the Ontario resident; and
- (b) the individual shall be deemed to be an employee who reports for work at a permanent establishment of the Ontario resident in Ontario.

5.—(1) Every employer who is liable to pay tax under this Act for a year shall deliver to the Minister on or before the prescribed date a return in a form approved by the Minister setting out the total Ontario remuneration paid or deemed to have been paid by the employer for the year, the amount of tax payable for the year under this Act and such other information as may be required by the Minister for the purposes of this Act.

Annual
returns

(2) An employer who ceases to have a permanent establishment in Ontario before the end of a year shall deliver the return required under subsection (1) for the year to the Minister on or before the prescribed day.

Cessation of
permanent
establishment

(3) Every employer shall ensure that each return delivered under this section is verified by a certificate that states that the information contained in the return is true and correct and that is signed by the employer, by a duly authorized officer of the employer or, in the case of an employer having its head office outside Ontario, by the manager or chief agent of the employer in Ontario or by such other person or persons having knowledge to the satisfaction of the Minister of the matters required to be disclosed in the return.

Certification
of return

(4) The Minister may at any time require an employer to deliver to the Minister a return in respect of any period of time setting out such information as the Minister may specify for the purposes of this Act.

Supplemental
return

(5) The Minister may require the employer to remit to the Minister with the return under subsection (4) any tax under this Act that was not previously paid in respect of the period.

Unpaid tax

Extension of
time

(6) The Minister may extend the time for delivering a return or paying an amount required to be paid under this Act, with or without interest.

Returns by
trustees in
bankruptcy,
etc.

(7) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of an employer shall, if the employer has not delivered a return under this section for a year, deliver the return for the employer on or before the date required under this section.

Balance of
tax

(8) Every employer or person referred to in subsection (7) shall remit to the Minister the balance of tax, if any, payable under this Act by the employer in respect of a year at the time the return under this section is required to be delivered.

Refunds

6.—(1) If the return required to be delivered by an employer under this Act has been delivered, the Minister,

- (a) may refund without application therefor any overpayment made on account of the tax payable under this Act for the year; and
- (b) shall make such a refund if application therefor has been made in writing to the Minister within four years from the day on which the return was required to be delivered under section 5.

Application
to other
liability

(2) Instead of making a refund under subsection (1), the Minister may, where the employer is liable or is about to become liable to make a payment under this Act or under any other Act administered by the Minister, apply the amount of the overpayment to the liability and in such case the Minister shall notify the employer that such action was taken.

Interest

7.—(1) Where, on a particular date, the aggregate of the debt payable by an employer under this Act and all amounts which were at any time refunded to the employer or applied under this Act exceed the aggregate of all payments previously made by the employer under this Act, the employer shall be charged interest payable to the Treasurer at the prescribed rate and calculated in the prescribed manner on the amount of such excess from that date to the date the amount of such excess amount is received by the Minister.

Interest paid

(2) Where, on a particular date, the aggregate of all payments previously made by an employer under this Act exceeds the aggregate of the debt payable by the employer under this

Act as of that date and all amounts which were at any time refunded to the employer or applied under this Act, the Minister shall pay, credit or apply under this Act interest on the amount of such excess at the prescribed rate and calculated in the prescribed manner from that date to the date the amount of the excess is refunded to the employer or applied in accordance with this Act.

(3) Interest under this section shall be computed and compounded monthly to the date on which it is paid, refunded or applied under this Act. Compound interest

(4) In this section, the amount of the debt, if any, payable by an employer under this Act at a particular date is the amount by which, Amount of debt

(a) the aggregate of,

- (i) all instalments of tax under this Act payable by the employer before the date with respect to the current and all prior years,
- (ii) the amount, if any, by which the total amount of tax payable by the employer under this Act for all years ending before the date exceeds the aggregate of all instalments of tax payable by the employer under this Act in those years,
- (iii) all penalties assessed under this Act against the employer at any time before the date, and
- (iv) the aggregate of all amounts each of which is an amount of interest charged under this section to the employer in respect of a period of time ending before the date,

exceeds,

(b) the aggregate of,

- (i) the amount, if any, by which the aggregate of all instalments payable by the employer under this Act in a year ending before the date exceeds the total amount of tax payable by the employer under this Act for those years, and
- (ii) the aggregate of all amounts each of which is an amount of interest credited to the

employer in respect of a period of time ending before the date.

Tax
assessments

8.—(1) The Minister may assess the tax, interest or penalties payable in respect of a year under this Act,

- (a) at any time, if the employer or person delivering the return for the year under this Act,
 - (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in delivering the return or in supplying any information under this Act or in omitting to disclose any information, or
 - (ii) has filed with the Minister a waiver in a form approved by the Minister on or before the expiry of the time provided in clause (b); and
- (b) within four years from the later of the day on which the return required under this Act to be delivered was received by the Minister and the day the return was required to be delivered to the Minister.

Notice of
assessment

(2) Where the Minister assesses tax, interest or penalties under subsection (1), the Minister shall send a notice of assessment to the person liable to pay the amount assessed.

Continuation
of liability

(3) Liability for tax or interest payable under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister not
bound by
returns

(4) The Minister is not bound by a statement, a return or information delivered under this Act by or on behalf of any person and may assess the tax and any interest and penalties payable under this Act whether or not a return has been delivered and despite the contents of any return or information delivered to the Minister.

Assessment
valid and
binding

(5) An assessment, subject to being varied or vacated on an objection or appeal and subject to further assessment, shall be deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding under this Act related to the assessment.

Payment of
assessment

(6) Every employer shall, within thirty days from the date of sending of an assessment, pay any assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or an appeal from the assessment is outstanding.

(7) The Minister may direct that all taxes, interest and penalties then remaining unpaid by an employer on the day of sending of a notice of assessment be paid forthwith by the employer where,

Payment
forthwith

- (a) the Minister is of the opinion that the employer is attempting to avoid payment of the taxes, interest or penalties; or
- (b) the Minister made the assessment after the employer failed to deliver a return required under this Act or delivered an incomplete or inaccurate return.

9.—(1) An employer who objects to an assessment made under section 8 may, within 180 days from the day of sending of the notice of assessment, serve on the Minister a notice of objection in duplicate in the form approved by the Minister setting out the reasons for the objection and all relevant facts.

Objection to
tax
assessment

(2) Service of a notice of objection under this section shall be by registered mail addressed to the Minister or by such other method as is prescribed.

Service of
notice of
objection

(3) The Minister may accept a notice of objection under this section even though the notice was not served in the manner required by subsection (2).

Acceptance
of notice

(4) The time within which a notice of objection is to be served may be extended by the Minister if application for the extension is made within one year from the day of mailing of the notice of assessment which is the subject of the objection.

Extension of
time

(5) Upon receipt of the notice of objection, the Minister shall, as quickly as possible, reconsider the assessment and vacate, confirm or vary the assessment.

Minister's
duty to
reconsider

(6) The Minister shall notify the employer by registered mail or in the prescribed manner as to the action taken by the Minister under subsection (5) as quickly as possible after taking the action.

Notice of
decision

(7) An assessment made by the Minister under this section is not invalid by reason only that it is not made within the time required under section 8.

Time

(8) An assessment by the Minister in respect of tax, interest or penalties that relates to the same year in relation to which a notice of objection to assessment is delivered to the Minister

Subsequent
assessment
not to
invalidate

or an appeal from assessment is commenced in accordance with this Act does not invalidate the objection or appeal.

Appeal from
assessment

10.—(1) An employer who has served a notice of objection to an assessment under this Act may appeal the assessment, as vacated, confirmed or varied by the Minister, to the Supreme Court.

Time

(2) No appeal under subsection (1) may be commenced more than ninety days after the date on which notice is given to the employer that the Minister has vacated, confirmed or varied the assessment.

Manner

(3) An appeal shall be commenced by serving on the Minister a notice of appeal in duplicate in a form approved by the Minister and filing a copy of the notice with the Registrar of the Supreme Court or the local registrar of the Supreme Court for the district in which the employer appealing has a permanent establishment.

Service

(4) A notice of appeal shall be served upon the Minister by registered mail or in a prescribed manner.

Extension of
time

(5) The Minister may extend the time for commencing an appeal if application for the extension is made before the expiration of the time specified in this section.

Contents

(6) The employer appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons the employer intends to submit in support of the appeal.

Reply

(7) The Minister shall, as quickly as possible, serve on the employer and file with the court a reply to the notice of appeal admitting or denying the facts alleged and stating such further allegations of fact and all statutory provisions and reasons that the Minister intends to rely on.

Application

(8) Where the Minister does not file the reply within 180 days from the date of service of the notice of appeal upon the Minister, the employer may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the Minister to serve and file the reply within such time as the judge may order.

Order

(9) Upon an application under subsection (8), the judge may, if the judge considers it proper in the circumstances, order also that upon the failure of the Minister to serve and file the reply in the time specified in the order, the assessment or part thereof, as the case may be, with respect to which the

appeal is taken shall be vacated and any tax paid pursuant to such assessment or the part thereof shall be repaid to the employer.

(10) Nothing in this section revives an appeal that is void or affects an assessment that has become valid and binding under this Act. Revival

11.—(1) Upon the filing of the notice of appeal and reply in the Supreme Court in accordance with section 10, the matter shall be deemed to be an action in the Supreme Court and the practice and procedure of the Supreme Court, including the right of appeal, and the practice and procedure relating to appeals, apply to the action. Action

(2) Every judgment or order given or made in the action may be enforced in the same manner and by the same process as a judgment or order in an action commenced in the Supreme Court. Enforcement

(3) An assessment shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act. Irregularity

(4) The court may dispose of an appeal by dismissing it, allowing it, or by allowing it and, Powers of court

(a) vacating the assessment;

(b) varying the assessment;

(c) restoring the assessment; or

(d) referring the assessment back to the Minister for reconsideration and reassessment.

(5) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax, interest, penalties or costs by the employer or the Minister, as the court considers appropriate. Order for payment

12.—(1) Every employer required by this Act to pay tax shall keep records and books of account at a permanent establishment in Ontario of the employer or at such other place as is designated by the Minister. Records and books of account

(2) Every employer required by subsection (1) to keep records and books of account shall keep the records and books of account in such form and containing such information as will Form and content

enable the Minister to determine that this Act and the regulations have been complied with.

Failure to
keep records

(3) The Minister may require an employer who has failed to keep records and books of account that comply with subsections (1) and (2) to keep such records and books of account as the Minister specifies.

Retention of
records

(4) Every employer required by this section to keep records and books of account shall, until permission for their disposal is given by the Minister, retain each such record and book of account and every primary source document required to support and verify the entries and information in the records and books of account.

Audits

13.—(1) The Minister may appoint in writing one or more persons as inspectors for the purposes of this Act.

Entry and
inspection

(2) An inspector may at any reasonable time, without a warrant, enter any place of business of an employer to make an inspection to ensure that there is compliance with this Act and the regulations.

Powers on
inspection

(3) Upon an inspection under this section, the inspector,

- (a) has the right to inspect the premises and the operations carried out on the premises;
- (b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant for the purposes of the inspection, regardless of the form or medium in which such books, documents, correspondence and records are kept, but, if they or any of them are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;
- (c) has the right to question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination; and
- (d) has the right to test the accuracy and integrity of computer programs used in processing information relevant to determining any amount payable under this Act.

14. No person shall obstruct an inspector or withhold or conceal from an inspector any book of account, document, correspondence or record, including any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act.

Obstruction
of inspector

15.—(1) The Minister may, for the purpose of the administration or enforcement of this Act, by a written notice require from an employer or from a director, employee or agent of an employer, or from any other person,

Demand for
information

- (a) any information or additional information or any required or prescribed form; or
- (b) production, or production on oath or affirmation, of books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant to the administration or enforcement of this Act.

(2) A notice under subsection (1) may require that the information or production be given or produced within such reasonable time as is specified in the letter or demand.

Time for
production

16. A copy of a book of account, document, correspondence or record, or any part of any of them, certified by an inspector or an employee of the Ministry to be a true copy of the original shall be received in evidence in any proceeding to the same extent and have the same evidentiary value as the material of which it is a copy.

Copies of
documents

17. Any officer or employee of the Ministry who is authorized by the Minister may administer oaths and take or receive affidavits, declarations or affirmations for the purpose of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits.

Adminis-
tration of
oaths

18.—(1) In this section, “institution” means a bank, credit union, trust company or other similar organization.

Garnishment

(2) Where the Minister has knowledge or suspects that a person is or will be, within ninety days, liable to make a payment to an employer who is liable to make a payment under this Act, the Minister may, by a written notice, require the person to pay forthwith, where the moneys are immediately payable, and, in any other case, as and when the moneys become payable, the moneys otherwise payable to the

Notice by
Minister

employer in whole or in part to the Treasurer on account of the employer's liability under this Act.

Idem

(3) Despite subsection (2), where the Minister has knowledge or suspects that within ninety days,

- (a) an institution will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by an employer who is indebted to the institution and who has granted security in respect of the indebtedness; or
- (b) a person other than an institution will loan or advance moneys to, or make a payment on behalf of, an employer who the Minister knows or suspects,
 - (i) is engaged in providing services or property to that person, or was or will be within ninety days, or
 - (ii) where that person is a corporation which is not dealing at arm's length with the employer,

the Minister may, by a written notice, require the institution or the person, as the case may be, to pay in whole or in part to the Treasurer, on account of the employer's liability under this Act, the moneys that would otherwise be loaned, advanced or paid, and any moneys paid to the Treasurer shall be deemed to have been loaned, advanced or paid, as the case may be, to the employer.

Idem

(4) Where, under this section, the Minister has required a person to pay to the Treasurer moneys otherwise payable by the person to an employer as interest, rent, a dividend, an annuity payment, or other periodic payment,

- (a) the requirement shall apply to all such periodic payments to be made by the person to the employer after the date of receipt by the person of the Minister's letter, until the employer's liability under this Act has been satisfied; and
- (b) the payments required to be made to the Treasurer shall be made from each such periodic payment in the amount or amounts designated in the Minister's letter.

(5) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Receipt of
the Treasurer

(6) Every person who fails to comply with a requirement under subsection (2), (3) or (4) is liable to pay to the Crown in right of Ontario an amount equal to the amount that the person was required under subsection (2), (3) or (4), as applicable, to pay to the Treasurer.

Liability for
failure to
comply

(7) Every institution or person who fails to comply with a requirement under subsection (2), (3) or (4) with respect to moneys to be loaned, advanced or paid is liable to pay to the Crown in right of Ontario an amount equal to the lesser of,

Idem

(a) the aggregate of moneys so loaned, advanced or paid; or

(b) the amount that the institution or person was required by subsection (2), (3) or (4) to pay to the Treasurer.

(8) This section is subject to the *Wages Act*.

Application
of
R.S.O. 1980,
c. 526

19.—(1) Every trustee or other person required by this Act to file an annual return for an employer in respect of a year shall, within thirty days from the day of mailing of a notice of assessment issued by the Minister, pay all taxes, interest and penalties payable under this Act by the employer to the extent that the person has or had, at any time since the year, in his or her possession or control property belonging to the employer or the estate of the employer and shall thereupon be deemed to have made the payment on behalf of the employer.

Liability of
receivers,
etc.

(2) Every assignee, liquidator, receiver, receiver-manager and other agent, other than a trustee in bankruptcy, before distributing any property of the employer under such person's control, shall obtain a certificate from the Minister certifying that all taxes, interest and penalties that have been assessed under this Act and are chargeable against or payable out of the property of the employer have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under this Act.

Certificate of
taxes paid

(3) Any person referred to in subsection (2) who fails to obtain the certificate referred to therein is personally liable to the Crown in right of Ontario for an amount equal to the taxes, interest and penalties under subsection (1) and such

Personal
liability of
receivers

debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act.

Recovery of
tax, interest
and penalties

20.—(1) Upon default of payment by an employer of any tax, interest or penalty imposed by this Act,

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office, may be continued by his or her successor in office as if no change had occurred and shall be tried without a jury;
- (b) the Minister may issue a warrant, directed to the sheriff of the district where any property of the employer is located or situate, for the amount of tax, interest and penalty or any of them owing by the employer, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court of Ontario.

Security

(2) The Minister may, if the Minister considers it advisable, accept security for the payment of taxes by an employer by way of a mortgage or other charge of any kind upon the property of the employer or of any other person, or by way of a guarantee of the payment of the taxes by another person.

Costs

(3) The Minister is entitled to recover from an employer the reasonable costs and charges incurred in the course of obtaining payment of taxes, interest or penalties owed by the employer under this Act in connection with,

- (a) the service of a notice or other document;
- (b) the bringing of an action for the recovery of tax, interest and penalties; or
- (c) the issuance and execution of a warrant referred to in clause (1) (b) to the extent not recovered by the sheriff upon execution thereof.

Idem

(4) For the purpose of collecting debts owed by an employer to the Crown in right of Ontario under this Act, the Minister may purchase or otherwise acquire any interest in the

property of an employer that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and the Minister may dispose of an interest so acquired in such manner as the Minister considers reasonable.

21. Where there is uncertainty as to the liability of an employer to pay any tax imposed under this Act, or where, owing to special circumstances, it is inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as the Minister considers proper in satisfaction of any tax, interest and penalties under this Act. Compromises

22.—(1) Where an employer has failed to pay taxes, interest and penalties or any of them imposed by this Act for a period of more than three years from the date of sending of a notice of assessment under this Act, no person shall sell any property of the employer unless the person has given written notice by registered letter to the Minister not less than ten days before the date of the sale. Notice of
sale of assets

(2) Every person who contravenes subsection (1) is liable to a penalty of not less than an amount equal to the amount of the taxes, interest and penalties owed by the employer on the date of the sale. Penalty

23.—(1) The use of a remedy provided by this Act does not bar or affect any of the other remedies provided by this Act. Remedies

(2) The remedies provided by this Act for the recovery or enforcement of the payment of any tax, interest and penalty or any of them imposed by this Act are in addition to any other remedies existing by law. Additional
remedies

24. No action or other proceeding taken under this Act in any way prejudices, limits or affects any charge or priority existing under this Act or otherwise. Priorities

25. For the purpose of a proceeding under this Act, an affidavit by the Minister or an officer of the Ministry is, in the absence of evidence to the contrary, proof of the facts set out in the affidavit without proof of the signature or office of the Minister or officer of the Ministry. Proof by
affidavit

26. Every person employed in the administration or enforcement of this Act or in the development and evaluation of tax policy for the Government of Ontario shall preserve secrecy with respect to all matters related to this Act that Confiden-
tiality

come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person except,

R.S.C. 1952,
c. 148

- (a) as may be required in connection with the administration or enforcement of this Act, any other Act administered by the Minister or the *Income Tax Act* (Canada) or the regulations made under any of them;
- (b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario;
- (c) with the consent of the person to whom the information or material relates;
- (d) to counsel for the person required by this section to preserve secrecy.

Exchange of
information

27. The Minister may, for the purpose of administering this Act, enter into an agreement with the Government of Canada or the government of any other province or territory of Canada under which such government will be allowed access to information obtained under this Act and the Minister will be allowed access to information obtained under any Act of such government.

Service of
documents

28.—(1) Any notice or other document required by this Act to be served or given may be served personally, may be sent by registered mail addressed to the person to whom the notice or other document is to be served or given at the last known address of the person or may be served in the prescribed manner.

Address

(2) A notice by the Minister under this Act is validly addressed,

- (a) to a person, if addressed to the person in the name or style under which the person carries on business;
- (b) to persons who carry on business in partnership, if addressed to the partnership.

Personal
service

(3) A notice by the Minister under this Act is validly served,

- (a) upon a person, if left with an adult person employed at the place of business of the person to whom the notice is addressed;

- (b) upon persons who carry on business in partnership, if served on one of the partners or left with an adult person employed at the place of business of the partnership.

(4) A notice or other document sent by registered mail in accordance with subsection (1) shall be deemed to have been served or given on the fifth day after the day of mailing unless the person to whom the notice or other document is sent establishes that, although acting in good faith, he or she did not receive the notice or did not receive the notice until a later date.

Registered
mail

(5) A return or other document under this Act that is delivered to the Minister shall be deemed to be delivered on the day it is received by the Minister.

Delivery to
Minister

29.—(1) Every person who fails to deliver a return or statement at the time and in the manner required by this Act or the regulations shall pay a penalty of an amount equal to 10 per cent of the tax or of the instalment on account of tax unpaid on the date the return or statement was required to be delivered, but such penalty shall not be less than \$50 and not more than \$2,500.

Penalties,
failure to
deliver return

(2) Every employer who fails to complete the information required on a return or statement is liable to a penalty of the greater of 1 per cent of tax or of the instalment on account of tax payable by the employer under this Act or \$50, up to a maximum of \$200.

Failure to
complete
return

(3) Where a person, acting or purporting to act on behalf of an employer, knowingly, or in circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes or participates in, assents to or acquiesces in the making of, an incorrect statement or an omission in a return, certificate or other document delivered or made as required by or under this Act or the regulations, the employer is liable to a penalty of 25 per cent of the amount, if any, by which,

False
statement

- (a) the tax for the year that would be payable under this Act if the remuneration paid during the year had been computed by adding to the remuneration reported in the return, certificate or other document for the year that portion of the understatement of remuneration for the year which is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by the employer under this Act had the tax payable for the year been calculated on the basis of the information provided in the return, certificate or other document.

Offences,
statements

30.—(1) Every person who makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer or other document delivered or made as required by or under this Act or the regulations is guilty of an offence.

Idem,
records

(2) Every person who, to evade payment of the tax imposed by this Act, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of an employer is guilty of an offence.

Idem

(3) Every person who makes, assents to or acquiesces in the making of false or deceptive entries in records or books of account of an employer is guilty of an offence.

Offences,
material facts

(4) Every person who omits, or assents to or acquiesces in the omission, to enter a material particular in records or books of account of an employer is guilty of an offence.

Offence,
compliance

(5) Every person who wilfully in any manner evades or attempts to evade compliance with this Act or payment of the tax imposed by this Act is guilty of an offence.

Offence,
conspiracy

(6) Every person who conspires with any other person to commit an offence described in subsections (1) to (5) is guilty of an offence.

Punishment

(7) Every person who is guilty of an offence under subsection (1), (2), (3), (4), (5) or (6), in addition to any other penalty, is liable on conviction to,

- (a) a fine of not less than the greater of \$500 and 25 per cent of the amount of the tax that should have been shown to be payable or that was sought to be evaded and not more than double the amount of the tax which should have been shown to be payable or which was sought to be evaded;
- (b) imprisonment for a term of not more than two years; or
- (c) both a fine under clause (a) and imprisonment under clause (b).

31. Every employer who fails to deliver a return at the time and in the manner required by this Act or the regulations is guilty of an offence and, in addition to any other penalty, is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Offence,
failure to
deliver return

32.—(1) Every person who fails to keep records and books of account in accordance with this Act and the regulations is guilty of an offence.

Offence,
records and
books of
account

(2) Every person who fails to keep such records and books of account as the Minister specifies under subsection 11 (3) is guilty of an offence.

Idem

(3) Every person who fails to retain records, books of account and source documents required by this Act until permission for disposal is given by the Minister is guilty of an offence.

Idem

(4) Every person who is guilty of an offence under subsection (1), (2) or (3) is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Fine

33. Every person who obstructs an inspector or withholds or conceals from an inspector any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$5,000 on a first conviction and not less than \$100 and not more than \$10,000 on each subsequent conviction.

Offence,
obstruction

34. Every person who contravenes or fails to comply with any provision of this Act or the regulations is guilty of an offence and on conviction, where no other fine is provided in this Act, is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000.

General
offence

35. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is guilty of the offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Officers, etc.,
of
corporations

36. Proceedings for an offence under this Act or the regulations shall not be commenced after eight years after the date

Limitation

on which the offence was, or is alleged to have been, committed.

Regulations

37.—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) defining any word or expression in this Act that has not been expressly defined in this Act;
- (c) prescribing rates of interest for the purposes of this Act or a formula for computing the rates and the method of calculating the interest;
- (d) requiring or permitting the payment of instalments on account of tax payable under this Act at times and with respect to time periods other than as required under section 3, and providing for the method of determining the amount of such instalment payments;
- (e) requiring or permitting the determination of the amount of an instalment payment in a manner other than as required under section 3;
- (f) prescribing persons or classes of persons who will be exempt from the payment of tax and from the requirement to make instalment payments under this Act;
- (g) prescribing classes of individuals or employees whose remuneration shall be deemed not to form part of total Ontario remuneration paid by an employer or a class of employers;
- (h) providing for a rebate of tax in whole or in part and prescribing the terms and conditions under which such rebates shall be made and the method of determining the amount of such rebate.

Minister

(2) The Minister may make regulations,

- (a) prescribing forms that, in the opinion of the Minister, will assist in the administration of this Act and requiring the use of such forms;
- (b) prescribing how and by whom forms required by this Act or prescribed forms shall be completed;

- (c) prescribing what information shall be set out in forms required by this Act or in prescribed forms.

(3) A regulation is, if it so provides, effective with reference to a period before it is filed under the *Regulations Act*. Retroactivity
R.S.O. 1980,
c. 446

38. This Act binds the Crown. The Crown

39. The Minister may for any purpose related to the administration of this Act request information from any employer by way of a questionnaire, and every employer shall respond within such reasonable time as is specified in the request. Question-
naires

40.—(1) Clause 4 (2) (b) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by striking out “and collection of premiums” in the second and third lines.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

(3) Every person is entitled to become an insured person without payment of a premium upon application to the General Manager in the form provided by the General Manager if the person, after the 31st day of December, 1989 and before the 1st day of April, 1990, Transitional

(a) becomes a resident of Ontario; or

(b) is a resident of Ontario and ceases to be a member of a class designated by the regulations.

(3) Section 12 of the said Act is amended by striking out “during the period in respect of which his premium is paid or dispensed with under this Act” in the fourth, fifth and sixth lines.

(4) Sections 13, 14 and 15 of the said Act are repealed.

(5) Sections 16, 17 and 18 of the said Act are repealed.

(6) Clause 26 (1) (b) of the said Act is repealed.

(7) Clause 28 (a) of the said Act is amended by striking out “or (b)” in the first line.

(8) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

Inspections

(1) Any person designated in writing by the General Manager may enter the premises of a person or organization that was an employer of a mandatory group before the 1st day of January, 1990 or of a person who was a collector under this Act before that date and inspect the books of account, payroll records and other records for the purpose of obtaining information relating to the membership of the group.

(9) Subsection 47 (1) of the said Act is amended by striking out “fails” in the second line and inserting in lieu thereof “has failed”.

(10) Subsection 47 (3) of the said Act is amended by striking out “concurr” in the second line and inserting in lieu thereof “has concurred”.

(11) Section 48 of the said Act is amended by striking out “Where an employer or collector that is a corporation fails” in the first and second lines and inserting in lieu thereof “Where a person or organization that was an employer before the 1st day of January, 1990, or a person that was a collector before that date and that is a corporation, has failed”.

(12) Clauses 51 (1) (c), (d) and (e) of the said Act are repealed.

(13) Clauses 51 (1) (g) and (h) of the said Act are repealed.

(14) Clause 51 (1) (o) of the said Act is amended by striking out “in addition to the payment of the premiums” in the second and third lines.

(15) Subsection 51 (1) of the said Act is amended by adding thereto the following clause:

(y) designating classes for the purpose of subsection 11 (3).

(16) Subsection 52 (2) of the said Act is amended by striking out “additional premium or other charge beyond that necessary to entitle him to insured services under the Plan” in the sixth, seventh and eighth lines and inserting in lieu thereof “premium or other charge”.

Commence-
ment

41.—(1) Except as provided in subsections (2) to (5), this Act shall be deemed to have come into force on the 1st day of December, 1989.

Idem

(2) This section and sections 1, 37 and 42 come into force on the day this Act receives Royal Assent.

(3) Section 39 shall be deemed to have come into force on the 1st day of August, 1989. Idem

(4) Subsections 40 (2), (5), (8), (9), (10), (11) and (12) come into force on the 1st day of January, 1990. Idem

(5) Subsections 40 (1), (3), (4), (6), (7), (13), (14) and (16) come into force on the 1st day of April, 1990. Idem

42. The short title of this Act is the *Employer Health Tax Act, 1989*. Short title

Bill 47

(Chapter 76
Statutes of Ontario, 1989)

An Act to impose a Tax on Employers for the purpose of providing for Health Care and to revise the requirements respecting the payment of Premiums under the Health Insurance Act

The Hon. R. Mancini
Minister of Revenue



<i>1st Reading</i>	July 10th, 1989
<i>2nd Reading</i>	October 26th, 1989
<i>3rd Reading</i>	December 19th, 1989
<i>Royal Assent</i>	December 19th, 1989

Bill 47

1989

**An Act to impose a Tax on Employers
for the purpose of providing for Health Care and to
revise the requirements respecting the payment of
Premiums under the Health Insurance Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“assessment” includes reassessment;

“employee” means,

- (a) an individual employed by and in the service of an employer,
- (b) an individual who holds office from an employer and receives remuneration in respect of the performance of the duties of the office,
- (c) with reference to reporting for work at a permanent establishment of an employer in Ontario, an employee of the employer from whose remuneration the employer is required to deduct, withhold and remit an amount under the *Income Tax Act* on account of the tax payable by the employee under that Act or would be required to so deduct, withhold and remit if the employee's remuneration were greater;

R.S.O. 1980,
c. 213

“employer” means a person or a government, including the government of a province, a territory or Canada, who pays remuneration to an employee;

“inspector” means a person authorized by the Minister as an inspector under this Act;

“Minister” means Minister of Revenue;

“Ministry” means Ministry of Revenue;

“place of business” means a place where an undertaking or activity, including a function of government, is carried on, whether or not carried on for gain or profit;

“prescribed” means prescribed by the regulations;

“quarter”, in respect of an instalment of tax under this Act, refers to a period of three consecutive months;

“regulations” means regulations made under this Act;

R.S.C. 1952,
c. 148

“remuneration” includes all payments, benefits and allowances received or deemed to be received by an individual that, by reason of section 5, 6 or 7 of the *Income Tax Act* (Canada), are required to be included in the income of the individual for the purposes of that Act and, without limiting the generality of the foregoing, includes salaries and wages, bonuses, taxable allowances and commissions and other similar amounts fixed by reference to the volume of sales made or contracts negotiated, but does not include a pension, annuity or superannuation benefit paid by an employer to a former employee after retirement of the employee;

“small employer” means,

- (a) in respect of 1990, an employer who pays total Ontario remuneration for 1990 that does not exceed \$400,000, and
- (b) in respect of any other year, an employer who pays total Ontario remuneration for the year that does not exceed the prescribed amount for the year;

“total Ontario remuneration”, in respect of an employer, means the total remuneration paid,

- (a) to or on behalf of all of the employees of the employer who report for work at a permanent establishment of the employer in Ontario, and
- (b) to or on behalf of all of the employees of the employer who are not required to report for work at a permanent establishment of the employer but whose remuneration is paid from or through a permanent establishment of the employer in Ontario;

“Treasurer” means Treasurer of Ontario.

(2) In this Act, “permanent establishment” includes any fixed place of business, including an agency, a branch, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse and a workshop and, without limiting the generality of the foregoing,

Permanent
establishment

- (a) a corporation has a permanent establishment in the place designated in its charter or by-laws as being its head office;
- (b) a person shall be deemed to have a permanent establishment in a jurisdiction in which the person carries on business through an employee or an agent either of whom has general authority to contract for the person;
- (c) a person shall be deemed to have a permanent establishment in a jurisdiction in which an employee or agent of the person has a stock of merchandise owned by the person from which the employee or agent fills orders received by the employee or agent;
- (d) land or premises owned or leased by an employer is a permanent establishment of the employer;
- (e) an employer shall be deemed to have a permanent establishment in the place where and at the time when the employer uses substantial machinery or equipment;
- (f) an insurance corporation has a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business;
- (g) an employer, who does not otherwise carry on business in Canada in a year, has a permanent establishment at any place where the employer produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, anything in Canada, whether or not the employer exports that thing without selling it prior to exportation; and
- (h) an employer who has no fixed place of business shall be deemed to have a permanent establishment in the principal place in which the employer conducts business and in each place from which the employer carries on or transacts a substantial portion of the business.

Tax

2.—(1) Every employer shall pay to the Crown in right of Ontario a tax calculated in accordance with this Act.

Calculation of tax

(2) The amount of the tax payable by an employer for a year is an amount equal to the product of the total Ontario remuneration paid by the employer during the year multiplied by,

- (a) where the total Ontario remuneration paid by the employer during the year does not exceed \$200,000, a rate of 0.98 per cent;
- (b) where the total Ontario remuneration paid by the employer during the year exceeds \$200,000 but does not exceed \$400,000, the rate set out in the Table opposite the range of remunerations which includes the total Ontario remuneration paid by the employer during the year; or
- (c) where the total Ontario remuneration paid by the employer during the year exceeds \$400,000, a rate of 1.95 per cent.

TABLE

Total Ontario Remuneration	Rate
More than \$200,000 to and including \$230,000	1.101 per cent
More than \$230,000 to and including \$260,000	1.223 per cent
More than \$260,000 to and including \$290,000	1.344 per cent
More than \$290,000 to and including \$320,000	1.465 per cent
More than \$320,000 to and including \$350,000	1.586 per cent
More than \$350,000 to and including \$380,000	1.708 per cent
More than \$380,000 to and including \$400,000	1.829 per cent

Amounts included in total Ontario remuneration

(3) In determining the tax payable under this Act by any person, a payment made by the person, including a payment in kind, may be deemed by the Minister to be part of the total Ontario remuneration paid by the person where,

- (a) the payment is made to an employee of the person, a former employee of the person or another person who, at the time of the payment, did not deal at arm's length (within the meaning of section 251 of the *Income Tax Act* (Canada)) with an employee or former employee of the person; and
- (b) it is reasonable for the Minister to consider that the payment is made by the person in consideration for services rendered to the employer by the employee, former employee or the other person who did not

deal at arm's length with an employee or former employee of the person.

(4) No person otherwise subject to tax under this Act is exempt therefrom by reason of an exemption granted to the person, or to or in respect of the personal or real property of the person, by or under any other Act unless the other Act expressly mentions this Act.

Exemptions under other Acts

3.—(1) Every employer shall pay monthly instalments to the Treasurer at the prescribed time or times on account of the tax payable for the year under this Act by the employer.

Instalments

(2) Despite subsection (1), a small employer for the year shall pay quarterly instalments to the Treasurer at the prescribed time or times on account of the tax payable for the year under this Act by the small employer.

Small employer

(3) The amount of an instalment under subsection (1) or (2) shall be determined according to the following formula:

Amount

$$I = T \times R$$

Where:

I is the amount of the instalment in dollars;

T is the total Ontario remuneration paid by the employer during the month or the quarter, as applicable, last ending before the date the instalment is required to be paid;

R is the rate under section 2 that would apply if the total Ontario remuneration paid by the employer for the year was equal to,

- (a) in the case of a monthly instalment, twelve times the total Ontario remuneration paid by the employer for the month immediately preceding the date on which the employer is required to pay the instalment; or
- (b) in the case of a quarterly instalment, four times the total Ontario remuneration paid by the employer for the quarter immediately preceding the date on which the employer is required to pay the instalment.

(4) Every employer shall remit to the Minister each instalment of tax that the employer is required to pay under this

Remittance of instalment and statement

Act together with a statement in a form approved by the Minister setting out the amount of the instalment, the amount of total Ontario remuneration upon which the instalment is calculated and such other information as may be required by the Minister for the purposes of this Act.

When
remitted or
paid

(5) Any amount required by this Act to be remitted to the Minister or paid to the Treasurer is remitted or paid upon,

- (a) receipt of the remittance or payment by the Ministry of Revenue;
- (b) receipt and acceptance of the remittance or payment by a branch of a bank or other financial institution that accepts and undertakes to forward to the Minister such remittances and payments.

Prescribed
times for
1990

(6) For the purposes of this section, the prescribed time at which an employer shall pay instalments to the Treasurer on account of the tax payable by the employer under this Act for 1990 is,

- (a) the 15th day of each month in 1990 if the employer is required to make monthly instalments on account of the tax payable for 1990; and
- (b) the 15th days of April, July and October, 1990, and the 15th day of January, 1991, if the employer is a small employer for 1990.

Formula

(7) Despite subsection (3), in applying the formula contained in that subsection to determine the amount of the monthly instalment that may be payable by an employer on January 15, 1990, "T" may be read as the total Ontario remuneration paid by the employer during December, 1989 or the total Ontario remuneration that has been or will be paid by the employer during January, 1990.

Definition

4.—(1) In this section, "Ontario resident" means a person who has a permanent establishment in Ontario.

Deemed
employer

(2) An Ontario resident who enters into an agreement with a non-resident employer under which work is performed or services are provided during a year for the benefit of the Ontario resident by an individual employed by the non-resident employer, the Ontario resident shall be deemed to be the employer of the individual and the individual shall be deemed to be an employee of the Ontario resident during any period in the year when the work is performed or the services are provided, if,

- (a) the non-resident employer does not have a permanent establishment in Ontario during the period and is not subject to tax under this Act calculated by reference to remuneration paid to the individual performing the work or providing the services for the benefit of the Ontario resident during the period;
- (b) the work is performed or the services are provided in Ontario;
- (c) the Ontario resident and the non-resident employer do not deal at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), at any time during the period or did not deal at arm's length at the time they entered into the agreement or arrangement; and
- (d) the work being performed or the services being provided by the individual for the benefit of the Ontario resident are under the approval and direction of the Ontario resident and are of a nature which, in the Minister's opinion, could be expected to be carried out by an employee of a person for whose benefit the work is performed or the services are provided.

R.S.C. 1952,
c. 148

(3) Where an Ontario resident referred to in subsection (2) is deemed by that subsection to be the employer of an individual employed by a non-resident employer during a period in a year,

Deemed
payment of
remuneration

- (a) the Ontario resident shall be deemed to pay remuneration to the individual during the period in which the individual is deemed to be an employee of the Ontario resident in an amount equal to the remuneration paid or to be paid by the non-resident employer to the individual in respect of the work performed or the services provided by the individual in the period for the benefit of the Ontario resident; and
- (b) the individual shall be deemed to be an employee who reports for work at a permanent establishment of the Ontario resident in Ontario.

5.—(1) Every employer who is liable to pay tax under this Act for a year shall deliver to the Minister on or before the prescribed date a return in a form approved by the Minister setting out the total Ontario remuneration paid or deemed to

Annual
returns

have been paid by the employer for the year, the amount of tax payable for the year under this Act and such other information as may be required by the Minister for the purposes of this Act.

Cessation of permanent establishment

(2) An employer who ceases to have a permanent establishment in Ontario before the end of a year shall deliver the return required under subsection (1) for the year to the Minister on or before the prescribed day.

Certification of return

(3) Every employer shall ensure that each return delivered under this section is verified by a certificate that states that the information contained in the return is true and correct and that is signed by the employer, by a duly authorized officer of the employer or, in the case of an employer having its head office outside Ontario, by the manager or chief agent of the employer in Ontario or by such other person or persons having knowledge to the satisfaction of the Minister of the matters required to be disclosed in the return.

Supplemental return

(4) The Minister may at any time require an employer to deliver to the Minister a return in respect of any period of time setting out such information as the Minister may specify for the purposes of this Act.

Unpaid tax

(5) The Minister may require the employer to remit to the Minister with the return under subsection (4) any tax under this Act that was not previously paid in respect of the period.

Extension of time

(6) The Minister may extend the time for delivering a return or paying an amount required to be paid under this Act, with or without interest.

Returns by trustees in bankruptcy, etc.

(7) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of an employer shall, if the employer has not delivered a return under this section for a year, deliver the return for the employer on or before the date required under this section.

Balance of tax

(8) Every employer or person referred to in subsection (7) shall remit to the Minister the balance of tax, if any, payable under this Act by the employer in respect of a year at the time the return under this section is required to be delivered.

Refunds

6.—(1) If the return required to be delivered by an employer under this Act has been delivered, the Minister,

- (a) may refund without application therefor any overpayment made on account of the tax payable under this Act for the year; and
- (b) shall make such a refund if application therefor has been made in writing to the Minister within four years from the day on which the return was required to be delivered under section 5.

(2) Instead of making a refund under subsection (1), the Minister may, where the employer is liable or is about to become liable to make a payment under this Act or under any other Act administered by the Minister, apply the amount of the overpayment to the liability and in such case the Minister shall notify the employer that such action was taken.

Application
to other
liability

7.—(1) Where, on a particular date, the aggregate of the debt payable by an employer under this Act and all amounts which were at any time refunded to the employer or applied under this Act exceed the aggregate of all payments previously made by the employer under this Act, the employer shall be charged interest payable to the Treasurer at the prescribed rate and calculated in the prescribed manner on the amount of such excess from that date to the date the amount of such excess amount is received by the Minister.

Interest

(2) Where, on a particular date, the aggregate of all payments previously made by an employer under this Act exceeds the aggregate of the debt payable by the employer under this Act as of that date and all amounts which were at any time refunded to the employer or applied under this Act, the Minister shall pay, credit or apply under this Act interest on the amount of such excess at the prescribed rate and calculated in the prescribed manner from that date to the date the amount of the excess is refunded to the employer or applied in accordance with this Act.

Interest paid

(3) Interest under this section shall be computed and compounded monthly to the date on which it is paid, refunded or applied under this Act.

Compound
interest

(4) In this section, the amount of the debt, if any, payable by an employer under this Act at a particular date is the amount by which,

Amount of
debt

- (a) the aggregate of,
 - (i) all instalments of tax under this Act payable by the employer before the date with respect to the current and all prior years,

- (ii) the amount, if any, by which the total amount of tax payable by the employer under this Act for all years ending before the date exceeds the aggregate of all instalments of tax payable by the employer under this Act in those years,
- (iii) all penalties assessed under this Act against the employer at any time before the date, and
- (iv) the aggregate of all amounts each of which is an amount of interest charged under this section to the employer in respect of a period of time ending before the date,

exceeds,

(b) the aggregate of,

- (i) the amount, if any, by which the aggregate of all instalments payable by the employer under this Act in a year ending before the date exceeds the total amount of tax payable by the employer under this Act for those years, and
- (ii) the aggregate of all amounts each of which is an amount of interest credited to the employer in respect of a period of time ending before the date.

Determi-
nation of
prescribed
rate

(5) For the purposes of this Act, unless a regulation has been made and filed under clause 38 (1) (c), the prescribed rate of interest payable per year shall be determined using the following rules:

1. The rate of interest shall be reviewed semi-annually and adjusted effective the 1st day of April and the 1st day of October in each year and shall remain in force until the next adjustment date.
2. If the interest adjustment date is the 1st day of April, the rate of interest shall be the mean rate rounded to the nearest whole percentage point of the lowest interest rates charged to their most-credit-worthy borrowers for prime business loans by the Royal Bank of Canada, the Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and the Toronto-Dominion Bank on the immediately preceding 15th day of January.

3. If the interest adjustment date is the 1st day of October, the rate of interest shall be the mean rate rounded to the nearest whole percentage point of the lowest interest rates charged to their most-credit-worthy borrowers for prime business loans by the Royal Bank of Canada, the Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Bank of Montreal and the Toronto-Dominion Bank on the immediately preceding 15th day of July.
4. For the period from the 1st day of January, 1990 to the 31st day of March, 1990, the rate of interest under this Act shall be 14 per cent per year.

8.—(1) The Minister may assess the tax, interest or penalties payable in respect of a year under this Act, Tax assessments

- (a) at any time, if the employer or person delivering the return for the year under this Act,
 - (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in delivering the return or in supplying any information under this Act or in omitting to disclose any information, or
 - (ii) has filed with the Minister a waiver in a form approved by the Minister on or before the expiry of the time provided in clause (b); and
- (b) within four years from the later of the day on which the return required under this Act to be delivered was received by the Minister and the day the return was required to be delivered to the Minister.

(2) Where the Minister assesses tax, interest or penalties under subsection (1), the Minister shall send a notice of assessment to the person liable to pay the amount assessed. Notice of assessment

(3) Liability for tax or interest payable under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. Continuation of liability

(4) The Minister is not bound by a statement, a return or information delivered under this Act by or on behalf of any person and may assess the tax and any interest and penalties payable under this Act whether or not a return has been delivered and despite the contents of any return or information delivered to the Minister. Minister not bound by returns

Assessment
valid and
binding

(5) An assessment, subject to being varied or vacated on an objection or appeal and subject to further assessment, shall be deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding under this Act related to the assessment.

Payment of
assessment

(6) Every employer shall, within thirty days from the date of sending of an assessment, pay any assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or an appeal from the assessment is outstanding.

Payment
forthwith

(7) The Minister may direct that all taxes, interest and penalties then remaining unpaid by an employer on the day of sending of a notice of assessment be paid forthwith by the employer where,

- (a) the Minister is of the opinion that the employer is attempting to avoid payment of the taxes, interest or penalties; or
- (b) the Minister made the assessment after the employer failed to deliver a return required under this Act or delivered an incomplete or inaccurate return.

Objection to
tax
assessment

9.—(1) An employer who objects to an assessment made under section 8 may, within 180 days from the day of sending of the notice of assessment, serve on the Minister a notice of objection in duplicate in the form approved by the Minister setting out the reasons for the objection and all relevant facts.

Service of
notice of
objection

(2) Service of a notice of objection under this section shall be by registered mail addressed to the Minister or by such other method as is prescribed.

Acceptance
of notice

(3) The Minister may accept a notice of objection under this section even though the notice was not served in the manner required by subsection (2).

Extension of
time

(4) The time within which a notice of objection is to be served may be extended by the Minister if application for the extension is made within one year from the day of mailing of the notice of assessment which is the subject of the objection.

Minister's
duty to
reconsider

(5) Upon receipt of the notice of objection, the Minister shall, as quickly as possible, reconsider the assessment and vacate, confirm or vary the assessment.

Notice of
decision

(6) The Minister shall notify the employer by registered mail or in the prescribed manner as to the action taken by the

Minister under subsection (5) as quickly as possible after taking the action.

(7) An assessment made by the Minister under this section is not invalid by reason only that it is not made within the time required under section 8.

Time

(8) An assessment by the Minister in respect of tax, interest or penalties that relates to the same year in relation to which a notice of objection to assessment is delivered to the Minister or an appeal from assessment is commenced in accordance with this Act does not invalidate the objection or appeal.

Subsequent assessment not to invalidate

10.—(1) An employer who has served a notice of objection to an assessment under this Act may appeal the assessment, as vacated, confirmed or varied by the Minister, to the Supreme Court.

Appeal from assessment

(2) No appeal under subsection (1) may be commenced more than ninety days after the date on which notice is given to the employer that the Minister has vacated, confirmed or varied the assessment.

Time

(3) An appeal shall be commenced by serving on the Minister a notice of appeal in duplicate in a form approved by the Minister and filing a copy of the notice with the Registrar of the Supreme Court or the local registrar of the Supreme Court for the district in which the employer appealing has a permanent establishment.

Manner

(4) A notice of appeal shall be served upon the Minister by registered mail or in a prescribed manner.

Service

(5) The Minister may extend the time for commencing an appeal if application for the extension is made before the expiration of the time specified in this section.

Extension of time

(6) The employer appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons the employer intends to submit in support of the appeal.

Contents

(7) The Minister shall, as quickly as possible, serve on the employer and file with the court a reply to the notice of appeal admitting or denying the facts alleged and stating such further allegations of fact and all statutory provisions and reasons that the Minister intends to rely on.

Reply

(8) Where the Minister does not file the reply within 180 days from the date of service of the notice of appeal upon the

Application

Minister, the employer may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the Minister to serve and file the reply within such time as the judge may order.

Order (9) Upon an application under subsection (8), the judge may, if the judge considers it proper in the circumstances, order also that upon the failure of the Minister to serve and file the reply in the time specified in the order, the assessment or part thereof, as the case may be, with respect to which the appeal is taken shall be vacated and any tax paid pursuant to such assessment or the part thereof shall be repaid to the employer.

Revival (10) Nothing in this section revives an appeal that is void or affects an assessment that has become valid and binding under this Act.

Action **11.**—(1) Upon the filing of the notice of appeal and reply in the Supreme Court in accordance with section 10, the matter shall be deemed to be an action in the Supreme Court and the practice and procedure of the Supreme Court, including the right of appeal, and the practice and procedure relating to appeals, apply to the action.

Enforcement (2) Every judgment or order given or made in the action may be enforced in the same manner and by the same process as a judgment or order in an action commenced in the Supreme Court.

Irregularity (3) An assessment shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.

Powers of court (4) The court may dispose of an appeal by dismissing it, allowing it, or by allowing it and,

(a) vacating the assessment;

(b) varying the assessment;

(c) restoring the assessment; or

(d) referring the assessment back to the Minister for reconsideration and reassessment.

Order for payment (5) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax, interest, penalties or

costs by the employer or the Minister, as the court considers appropriate.

12.—(1) Every employer required by this Act to pay tax shall keep records and books of account at a permanent establishment in Ontario of the employer or at such other place as is designated by the Minister.

Records and
books of
account

(2) Every employer required by subsection (1) to keep records and books of account shall keep the records and books of account in such form and containing such information as will enable the Minister to determine that this Act and the regulations have been complied with.

Form and
content

(3) The Minister may require an employer who has failed to keep records and books of account that comply with subsections (1) and (2) to keep such records and books of account as the Minister specifies.

Failure to
keep records

(4) Every employer required by this section to keep records and books of account shall, until permission for their disposal is given by the Minister, retain each such record and book of account and every primary source document required to support and verify the entries and information in the records and books of account.

Retention of
records

13.—(1) The Minister may appoint in writing one or more persons as inspectors for the purposes of this Act.

Audits

(2) An inspector may at any reasonable time, without a warrant, enter any place of business of an employer to make an inspection to ensure that there is compliance with this Act and the regulations.

Entry and
inspection

(3) Upon an inspection under this section, the inspector,

Powers on
inspection

- (a) has the right to inspect the premises and the operations carried out on the premises;
- (b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant for the purposes of the inspection, regardless of the form or medium in which such books, documents, correspondence and records are kept, but, if they or any of them are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;

- (c) has the right to question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination; and
- (d) has the right to test the accuracy and integrity of computer programs used in processing information relevant to determining any amount payable under this Act.

Obstruction
of inspector

14. No person shall obstruct an inspector or withhold or conceal from an inspector any book of account, document, correspondence or record, including any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act.

Demand for
information

15.—(1) The Minister may, for the purpose of the administration or enforcement of this Act, by a written notice require from an employer or from a director, employee or agent of an employer, or from any other person,

- (a) any information or additional information or any required or prescribed form; or
- (b) production, or production on oath or affirmation, of books of account, documents, correspondence and records, including payroll, employment and any other records that are or may be relevant to the administration or enforcement of this Act.

Time for
production

(2) A notice under subsection (1) may require that the information or production be given or produced within such reasonable time as is specified in the letter or demand.

Copies of
documents

16. A copy of a book of account, document, correspondence or record, or any part of any of them, certified by an inspector or an employee of the Ministry to be a true copy of the original shall be received in evidence in any proceeding to the same extent and have the same evidentiary value as the material of which it is a copy.

Adminis-
tration of
oaths

17. Any officer or employee of the Ministry who is authorized by the Minister may administer oaths and take or receive affidavits, declarations or affirmations for the purpose or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of any such oath, affidavit, declaration or affirmation, all the powers of a commissioner for taking affidavits.

18.—(1) In this section, “institution” means a bank, credit union, trust company or other similar organization. Garnishment

(2) Where the Minister has knowledge or suspects that a person is or will be, within ninety days, liable to make a payment to an employer who is liable to make a payment under this Act, the Minister may, by a written notice, require the person to pay forthwith, where the moneys are immediately payable, and, in any other case, as and when the moneys become payable, the moneys otherwise payable to the employer in whole or in part to the Treasurer on account of the employer’s liability under this Act. Notice by Minister

(3) Despite subsection (2), where the Minister has knowledge or suspects that within ninety days, Idem

- (a) an institution will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by an employer who is indebted to the institution and who has granted security in respect of the indebtedness; or
- (b) a person other than an institution will loan or advance moneys to, or make a payment on behalf of, an employer who the Minister knows or suspects,
 - (i) is engaged in providing services or property to that person, or was or will be within ninety days, or
 - (ii) where that person is a corporation which is not dealing at arm’s length with the employer,

the Minister may, by a written notice, require the institution or the person, as the case may be, to pay in whole or in part to the Treasurer, on account of the employer’s liability under this Act, the moneys that would otherwise be loaned, advanced or paid, and any moneys paid to the Treasurer shall be deemed to have been loaned, advanced or paid, as the case may be, to the employer.

(4) Where, under this section, the Minister has required a person to pay to the Treasurer moneys otherwise payable by the person to an employer as interest, rent, a dividend, an annuity payment, or other periodic payment, Idem

- (a) the requirement shall apply to all such periodic payments to be made by the person to the employer

after the date of receipt by the person of the Minister's letter, until the employer's liability under this Act has been satisfied; and

- (b) the payments required to be made to the Treasurer shall be made from each such periodic payment in the amount or amounts designated in the Minister's letter.

Receipt of
the Treasurer

(5) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability for
failure to
comply

(6) Every person who fails to comply with a requirement under subsection (2), (3) or (4) is liable to pay to the Crown in right of Ontario an amount equal to the amount that the person was required under subsection (2), (3) or (4), as applicable, to pay to the Treasurer.

Idem

(7) Every institution or person who fails to comply with a requirement under subsection (2), (3) or (4) with respect to moneys to be loaned, advanced or paid is liable to pay to the Crown in right of Ontario an amount equal to the lesser of,

- (a) the aggregate of moneys so loaned, advanced or paid; or
- (b) the amount that the institution or person was required by subsection (2), (3) or (4) to pay to the Treasurer.

Application
of
R.S.O. 1980,
c. 526

(8) This section is subject to the *Wages Act*.

Liability of
receivers,
etc.

19.—(1) Every trustee or other person required by this Act to file an annual return for an employer in respect of a year shall, within thirty days from the day of mailing of a notice of assessment issued by the Minister, pay all taxes, interest and penalties payable under this Act by the employer to the extent that the person has or had, at any time since the year, in his or her possession or control property belonging to the employer or the estate of the employer and shall thereupon be deemed to have made the payment on behalf of the employer.

Certificate of
taxes paid

(2) Every assignee, liquidator, receiver, receiver-manager and other agent, other than a trustee in bankruptcy, before distributing any property of the employer under such person's control, shall obtain a certificate from the Minister certifying that all taxes, interest and penalties that have been assessed

under this Act and are chargeable against or payable out of the property of the employer have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under this Act.

(3) Any person referred to in subsection (2) who fails to obtain the certificate referred to therein is personally liable to the Crown in right of Ontario for an amount equal to the taxes, interest and penalties under subsection (1) and such debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act.

Personal
liability of
receivers

20.—(1) Upon default of payment by an employer of any tax, interest or penalty imposed by this Act,

Recovery of
tax, interest
and penalties

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or the Minister's name of office, may be continued by his or her successor in office as if no change had occurred and shall be tried without a jury;
- (b) the Minister may issue a warrant, directed to the sheriff of the district where any property of the employer is located or situate, for the amount of tax, interest and penalty or any of them owing by the employer, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of seizure and sale issued out of the Supreme Court of Ontario.

(2) The Minister may, if the Minister considers it advisable, accept security for the payment of taxes by an employer by way of a mortgage or other charge of any kind upon the property of the employer or of any other person, or by way of a guarantee of the payment of the taxes by another person.

Security

(3) The Minister is entitled to recover from an employer the reasonable costs and charges incurred in the course of obtaining payment of taxes, interest or penalties owed by the employer under this Act in connection with,

Costs

- (a) the service of a notice or other document;

- (b) the bringing of an action for the recovery of tax, interest and penalties; or
- (c) the issuance and execution of a warrant referred to in clause (1) (b) to the extent not recovered by the sheriff upon execution thereof.

Idem

(4) For the purpose of collecting debts owed by an employer to the Crown in right of Ontario under this Act, the Minister may purchase or otherwise acquire any interest in the property of an employer that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and the Minister may dispose of an interest so acquired in such manner as the Minister considers reasonable.

Out-of-province employer

21.—(1) In this section, “out-of-province employer” means an employer who does not ordinarily maintain a permanent establishment in Ontario but will establish a permanent establishment in Ontario for a period not exceeding twenty-four months.

Security

(2) Before establishing a permanent establishment in Ontario, an out-of-province employer shall provide security to the Minister for the tax which may become payable by him or her under this Act and shall obtain a certificate in duplicate from the Minister that the requirements of this section have been met.

Form of security

(3) The security referred to in subsection (2), and any security in replacement thereof, shall be in a form and of a kind acceptable to the Minister, and the Minister may demand additional or replacement security from time to time if the Minister considers that the original security is insufficient in relation to the out-of-province employer’s liabilities which will arise under this Act.

Waiver by Minister

(4) In the certificate issued under subsection (2), or in any replacement thereof issued after a request by the out-of-province employer, the Minister may waive the requirement that the out-of-province employer provide security if the Minister is satisfied at the time the certificate or replacement certificate is issued that,

- (a) the out-of-province employer will be maintaining a permanent establishment in Ontario for more than twenty-four consecutive months after the issuance of the certificate; or

- (b) the total Ontario remuneration in respect of the out-of-province employer for the year in which the certificate or replacement certificate is issued and for all subsequent years in which the out-of-province employer will be maintaining a permanent establishment in Ontario will be nil.

(5) Any person making a payment to an out-of-province employer without first obtaining the duplicate copy of the certificate to be issued under this section shall,

Duty of person making payment to out-of-province employer

- (a) deduct 1.95 per cent of all amounts payable to the out-of-province employer and pay such amount to the Treasurer on behalf of or as agent for the out-of-province employer on account of tax payable by the out-of-province employer under this Act; or
- (b) provide security in a form and of a kind acceptable to the Minister for 1.95 per cent of the total amount payable to the out-of-province employer to secure payment of the tax payable by the out-of-province employer under this Act.

(6) If a person dealing with an out-of-province employer fails to comply with subsection (5), the person is personally liable for payment of that portion of the tax imposed by this Act each year on the out-of-province employer that is determined in accordance with the following formula:

Liability

$$L = T \times (A/R)$$

where:

L is the amount of the liability of the person for the year under this subsection, expressed in dollars;

T is the total amount of tax payable by the out-of-province employer for the year;

A is the portion of the total Ontario remuneration for the year paid by the out-of-province employer in connection with carrying out the terms of all contracts between the person and the out-of-province employer; and

R is the total Ontario remuneration for the year paid by the out-of-province employer.

Computation
of interest

(7) For the purposes of computing interest payable to any person under section 7, any cash deposit paid to the Minister to be held as security under this section shall be considered to be a payment made under this Act, but nothing in this section relieves an out-of-province employer from the requirement to pay instalments under section 3 or any other amount required by this Act to be paid.

Compromises

22. Where there is uncertainty as to the liability of an employer to pay any tax imposed under this Act, or where, owing to special circumstances, it is inequitable to demand payment of the whole amount imposed by this Act, the Minister may accept such amount as the Minister considers proper in satisfaction of any tax, interest and penalties under this Act.

Notice of
sale of assets

23.—(1) Where an employer has failed to pay taxes, interest and penalties or any of them imposed by this Act for a period of more than three years from the date of sending of a notice of assessment under this Act, no person shall sell any property of the employer unless the person has given written notice by registered letter to the Minister not less than ten days before the date of the sale.

Penalty

(2) Every person who contravenes subsection (1) is liable to a penalty of not less than an amount equal to the amount of the taxes, interest and penalties owed by the employer on the date of the sale.

Remedies

24.—(1) The use of a remedy provided by this Act does not bar or affect any of the other remedies provided by this Act.

Additional
remedies

(2) The remedies provided by this Act for the recovery or enforcement of the payment of any tax, interest and penalty or any of them imposed by this Act are in addition to any other remedies existing by law.

Priorities

25. No action or other proceeding taken under this Act in any way prejudices, limits or affects any charge or priority existing under this Act or otherwise.

Proof by
affidavit

26. For the purpose of a proceeding under this Act, an affidavit by the Minister or an officer of the Ministry is, in the absence of evidence to the contrary, proof of the facts set out in the affidavit without proof of the signature or office of the Minister or officer of the Ministry.

Confiden-
tiality

27. Every person employed in the administration or enforcement of this Act or in the development and evaluation

of tax policy for the Government of Ontario shall preserve secrecy with respect to all matters related to this Act that come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person except,

- (a) as may be required in connection with the administration or enforcement of this Act, any other Act administered by the Minister or the *Income Tax Act* (Canada) or the regulations made under any of them; R.S.C. 1952,
c. 148
- (b) as may be required in connection with the development and evaluation of tax policy by the Government of Ontario;
- (c) with the consent of the person to whom the information or material relates;
- (d) to counsel for the person required by this section to preserve secrecy.

28. The Minister may, for the purpose of administering this Act, enter into an agreement with the Government of Canada or the government of any other province or territory of Canada under which such government will be allowed access to information obtained under this Act and the Minister will be allowed access to information obtained under any Act of such government. Exchange of
information

29.—(1) Any notice or other document required by this Act to be served or given may be served personally, may be sent by registered mail addressed to the person to whom the notice or other document is to be served or given at the last known address of the person or may be served in the prescribed manner. Service of
documents

(2) A notice by the Minister under this Act is validly addressed, Address

- (a) to a person, if addressed to the person in the name or style under which the person carries on business;
- (b) to persons who carry on business in partnership, if addressed to the partnership.

(3) A notice by the Minister under this Act is validly served, Personal
service

- (a) upon a person, if left with an adult person employed at the place of business of the person to whom the notice is addressed;
- (b) upon persons who carry on business in partnership, if served on one of the partners or left with an adult person employed at the place of business of the partnership.

Registered
mail

(4) A notice or other document sent by registered mail in accordance with subsection (1) shall be deemed to have been served or given on the fifth day after the day of mailing unless the person to whom the notice or other document is sent establishes that, although acting in good faith, he or she did not receive the notice or did not receive the notice until a later date.

Delivery to
Minister

(5) A return or other document under this Act that is delivered to the Minister shall be deemed to be delivered on the day it is received by the Minister.

Penalties,
failure to
deliver return

30.—(1) Every person who fails to deliver a return or statement at the time and in the manner required by this Act or the regulations shall pay a penalty of an amount equal to 10 per cent of the tax or of the instalment on account of tax unpaid on the date the return or statement was required to be delivered, but such penalty shall not be less than \$50 and not more than \$2,500.

Failure to
complete
return

(2) Every employer who fails to complete the information required on a return or statement is liable to a penalty of the greater of 1 per cent of tax or of the instalment on account of tax payable by the employer under this Act or \$50, up to a maximum of \$200.

False
statement

(3) Where a person, acting or purporting to act on behalf of an employer, knowingly, or in circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes or participates in, assents to or acquiesces in the making of, an incorrect statement or an omission in a return, certificate or other document delivered or made as required by or under this Act or the regulations, the employer is liable to a penalty of 25 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable under this Act if the remuneration paid during the year had been computed by adding to the remuneration reported in the return, certificate or other document for the year that portion of the understate-

ment of remuneration for the year which is reasonably attributable to the false statement,

exceeds,

- (b) the tax for the year that would have been payable by the employer under this Act had the tax payable for the year been calculated on the basis of the information provided in the return, certificate or other document.

31.—(1) Every person who makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, certificate, statement or answer or other document delivered or made as required by or under this Act or the regulations is guilty of an offence. Offences,
statements

(2) Every person who, to evade payment of the tax imposed by this Act, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of an employer is guilty of an offence. Idem,
records

(3) Every person who makes, assents to or acquiesces in the making of false or deceptive entries in records or books of account of an employer is guilty of an offence. Idem

(4) Every person who omits, or assents to or acquiesces in the omission, to enter a material particular in records or books of account of an employer is guilty of an offence. Offences,
material facts

(5) Every person who wilfully in any manner evades or attempts to evade compliance with this Act or payment of the tax imposed by this Act is guilty of an offence. Offence,
compliance

(6) Every person who conspires with any other person to commit an offence described in subsections (1) to (5) is guilty of an offence. Offence,
conspiracy

(7) Every person who is guilty of an offence under subsection (1), (2), (3), (4), (5) or (6), in addition to any other penalty, is liable on conviction to, Punishment

- (a) a fine of not less than the greater of \$500 and 25 per cent of the amount of the tax that should have been shown to be payable or that was sought to be evaded and not more than double the amount of the tax which should have been shown to be payable or which was sought to be evaded;

- (b) imprisonment for a term of not more than two years; or
- (c) both a fine under clause (a) and imprisonment under clause (b).

Offence,
failure to
deliver return

32. Every employer who fails to deliver a return at the time and in the manner required by this Act or the regulations is guilty of an offence and, in addition to any other penalty, is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Offence,
records and
books of
account

33.—(1) Every person who fails to keep records and books of account in accordance with this Act and the regulations is guilty of an offence.

Idem

(2) Every person who fails to keep such records and books of account as the Minister specifies under subsection 12 (3) is guilty of an offence.

Idem

(3) Every person who fails to retain records, books of account and source documents required by this Act until permission for disposal is given by the Minister is guilty of an offence.

Fine

(4) Every person who is guilty of an offence under subsection (1), (2) or (3) is liable on conviction to a fine of not less than \$50 and not more than \$500 for each day or part of a day on which the offence occurs or continues.

Offence,
obstruction

34. Every person who obstructs an inspector or withholds or conceals from an inspector any payroll, employment or other record that is or may be relevant for the purposes of an inspection under this Act is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$5,000 on a first conviction and not less than \$100 and not more than \$10,000 on each subsequent conviction.

General
offence

35. Every person who contravenes or fails to comply with any provision of this Act or the regulations is guilty of an offence and on conviction, where no other fine is provided in this Act, is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$5,000.

Officers, etc.,
of
corporations

36. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is guilty of the offence

and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

37. Proceedings for an offence under this Act or the regulations shall not be commenced after six years after the date on which the offence was, or is alleged to have been, committed. Limitation

38.—(1) The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing any matter referred to in this Act as prescribed by the regulations;
- (b) defining any word or expression in this Act that has not been expressly defined in this Act;
- (c) prescribing rates of interest for the purposes of this Act or a formula for computing the rates and the method of calculating the interest;
- (d) requiring or permitting the payment of instalments on account of tax payable under this Act at times and with respect to time periods other than as required under section 3, and providing for the method of determining the amount of such instalment payments;
- (e) requiring or permitting the determination of the amount of an instalment payment in a manner other than as required under section 3;
- (f) prescribing persons or classes of persons who will be exempt from the payment of tax and from the requirement to make instalment payments under this Act;
- (g) prescribing classes of individuals or employees whose remuneration shall be deemed not to form part of total Ontario remuneration paid by an employer or a class of employers;
- (h) providing for a rebate of tax in whole or in part and prescribing the terms and conditions under which such rebates shall be made and the method of determining the amount of such rebate.

(2) The Minister may make regulations,

Minister

- (a) prescribing forms that, in the opinion of the Minister, will assist in the administration of this Act and requiring the use of such forms;
- (b) prescribing how and by whom forms required by this Act or prescribed forms shall be completed;
- (c) prescribing what information shall be set out in forms required by this Act or in prescribed forms.

Retroactivity
R.S.O. 1980,
c. 446

(3) A regulation is, if it so provides, effective with reference to a period before it is filed under the *Regulations Act*.

The Crown

39. This Act binds the Crown.

Question-
naires

40. The Minister may for any purpose related to the administration of this Act request information from any employer by way of a questionnaire, and every employer shall respond within such reasonable time as is specified in the request.

41.—(1) Clause 4 (2) (b) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by striking out “and collection of premiums” in the second and third lines.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

Transitional

(3) Every person is entitled to become an insured person without payment of a premium upon application to the General Manager in the form provided by the General Manager if the person, after the 31st day of December, 1989 and before the 1st day of April, 1990,

- (a) becomes a resident of Ontario; or
- (b) is a resident of Ontario and ceases to be a member of a class designated by the regulations.

(3) Section 12 of the said Act is amended by striking out “during the period in respect of which his premium is paid or dispensed with under this Act” in the fourth, fifth and sixth lines.

(4) Sections 13, 14 and 15 of the said Act are repealed.

(5) Sections 16, 17 and 18 of the said Act are repealed.

(6) Clause 26 (1) (b) of the said Act is repealed.

(7) Clause 28 (a) of the said Act is amended by striking out “or (b)” in the first line.

(8) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

(1) Any person designated in writing by the General Manager may enter the premises of a person or organization that was an employer of a mandatory group before the 1st day of January, 1990 or of a person who was a collector under this Act before that date and inspect the books of account, payroll records and other records for the purpose of obtaining information relating to the membership of the group. Inspections

(9) Subsection 47 (1) of the said Act is amended by striking out “fails” in the second line and inserting in lieu thereof “has failed”.

(10) Subsection 47 (3) of the said Act is amended by striking out “concurs” in the second line and inserting in lieu thereof “has concurred”.

(11) Section 48 of the said Act is amended by striking out “Where an employer or collector that is a corporation fails” in the first and second lines and inserting in lieu thereof “Where a person or organization that was an employer before the 1st day of January, 1990, or a person that was a collector before that date and that is a corporation, has failed”.

(12) Clauses 51 (1) (c), (d) and (e) of the said Act are repealed.

(13) Clauses 51 (1) (g) and (h) of the said Act are repealed.

(14) Clause 51 (1) (o) of the said Act is amended by striking out “in addition to the payment of the premiums” in the second and third lines.

(15) Subsection 51 (1) of the said Act is amended by adding thereto the following clause:

(y) designating classes for the purpose of subsection 11 (3).

(16) Subsection 52 (2) of the said Act is amended by striking out “additional premium or other charge beyond that necessary to entitle him to insured services under the Plan” in the sixth, seventh and eighth lines and inserting in lieu thereof “premium or other charge”.

Commence-
ment

42.—(1) Except as provided in subsections (2) to (5), this Act comes into force on the 1st day of January, 1990.

Idem

(2) This section and sections 1, 38 and 43 come into force on the day this Act receives Royal Assent.

Idem

(3) Section 40 shall be deemed to have come into force on the 1st day of August, 1989.

Idem

(4) Subsections 41 (2), (5), (8), (9), (10), (11) and (12) come into force on the 1st day of January, 1990.

Idem

(5) Subsections 41 (1), (3), (4), (6), (7), (13), (14) and (16) come into force on the 1st day of April, 1990.

Short title

43. The short title of this Act is the *Employer Health Tax Act, 1989*.

Bill 48

An Act to amend the Land Transfer Tax Act

The Hon. B. Grandmaître
Minister of Revenue

1st Reading July 18th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to extend the ambit of the *Land Transfer Tax Act* to certain dispositions of beneficial interests in land, where the person receiving the beneficial interest has not registered a conveyance evidencing the disposition and has not paid tax under section 2 of the Act, in order to eliminate tax avoidance under the Act through the use of a trust.

SECTION 1. The proposed section 2a of the Act would impose a tax on certain dispositions of beneficial interests in land, payable thirty days after the disposition, equal to the amount of tax which would have been payable under section 2 if the disposition had been evidenced by a registered conveyance.

SECTION 2. The proposed amendments require the delivery of a return on every disposition of a beneficial interest in land which is subject to tax under section 2a. Administrative penalties are imposed for failing to deliver a return or failing to remit any tax payable under section 2a. The Minister may extend the time for delivering the return. Failure to deliver the return would be an offence. The maximum fine has been increased from an amount equivalent to the amount of tax payable to an amount that is double the amount of tax payable.

SECTION 3. The amendment is consequential upon the amendments to section 4 of the Act.

SECTION 4. The amendment to section 7 permits a refund of tax paid under section 2a where tax with respect to the same disposition has been paid under section 2 on the registration of a conveyance evidencing the disposition.

SECTION 5. The amendment clarifies that the Minister may issue assessments for penalties and interest payable under the Act.

SECTION 6. The amendment is consequential upon the amendments to section 4 of the Act.

Bill 48

1989

An Act to amend the Land Transfer Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

2a.—(1) For the purposes of this section, a disposition of a beneficial interest in land includes,

Disposition
of beneficial
interest in
land

- (a) a sale, transfer or assignment, however effected, of any part of a beneficial interest in land; and
- (b) any change in entitlement to or any accretion to a beneficial interest in land,

but does not include,

- (c) a disposition of agricultural land, within the meaning of subsection 2 (2c);
- (d) a transfer of a beneficial interest in land which occurs by reason of the death of the owner of the interest, if the transfer is not required to be made under the terms of an agreement enforceable by or against the person legally or beneficially entitled to the interest immediately following the death of the owner;
- (e) a transfer or assignment of a beneficial interest in land by a debtor to a creditor for the purpose only of providing security for a debt or loan and a transfer or reassignment by the creditor to the debtor of the security;
- (f) a lease of land or a transfer of the interest of a lessee under a lease of land if, at the time of the disposition, the unexpired term of the lease, includ-

ing any renewals or extensions provided for in the lease, does not exceed fifty years; or

- (g) a transfer or assignment of a beneficial interest in land arising on the execution of an agreement of purchase and sale of an interest in the land, or by a subsequent assignment of such beneficial interest by a purchaser under the agreement or by an assignee thereof, where,
 - (i) the value of the consideration specified in the agreement has not been paid to or for the benefit of the transferor, or
 - (ii) the liability for the value of the consideration specified in the agreement has not been assumed by or on behalf of the transferee.

Tax on
disposition of
a beneficial
interest

(2) If there is a disposition of a beneficial interest in land, tax at the rates otherwise determined under section 2 is payable to the Treasurer on the thirtieth day after the date of the disposition as if the disposition were a conveyance of land tendered for registration.

By whom
payable

(3) The tax under subsection (2) is payable by every person who acquires a beneficial interest in land or whose beneficial interest in land is increased as a result of the disposition.

Multiple
interests

(4) If more than one person acquires a beneficial interest in land, or more than one person's beneficial interest in land is increased as a result of the disposition, each of them is liable to pay only that percentage of the tax otherwise payable under this section that reflects their proportional share of the acquisition of or increase in beneficial interest.

Exception

(5) No tax is payable under this section if an instrument evidencing the disposition of the beneficial interest in land is registered within thirty days after the date of the disposition and the tax payable under section 2 on the registration of the instrument has been paid.

Tax paid
once only

(6) If a person has paid tax under this section and proposes to register an instrument evidencing the disposition, no tax is payable under section 2 if the Minister is satisfied that the instrument,

- (a) does not transfer any beneficial interest in land to any person other than a person who has paid tax on the disposition under this section; and

- (b) does not increase any person's beneficial interest in land in excess of the beneficial interest transferred by the disposition.

(7) If the tax payable under this section has been paid, or no tax is payable under this Act, the Minister, or a person authorized in writing by the Minister, shall so verify over his or her signature on the instrument.

Verification
of Minister

(8) An instrument verified under subsection (7) may be registered without the payment of tax under section 2 and without the production of the affidavits otherwise required by this Act.

Registration
of instrument

2.—(1) Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 3 and 1985, chapter 21, section 3, is further amended by adding thereto the following subsections:

(8a) Every person liable to pay tax under section 2a shall deliver a return to the Minister, in a form approved by the Minister, on or before the day when the tax is payable under that section and shall remit the tax payable with the return.

Idem

(8b) Every person who holds a legal interest in land in trust for any other person shall, within thirty days of becoming aware of any disposition of a beneficial interest in land to which section 2a applies, deliver to the Minister a return in a form approved by the Minister setting out the particulars of the disposition and such other information as the Minister may require for the purpose of determining the tax liability under this Act.

Idem

(9a) Every person who fails to deliver a return as required by subsection (8a), or who fails to remit with the return the amount of tax payable, shall pay, when assessed therefor, a penalty of an amount equal to the amount of the tax payable.

Idem

(2) Subsections 4 (10) and (11) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 20, section 3, are repealed and the following substituted therefor:

(10) The Minister may extend the time for making the return required under subsection (8), (8a) or (8b) either before or after the time for making it has expired.

Extension of
time for
returns

(11) In addition to any penalty otherwise payable under this Act, every person who has failed to deliver a return as

Offence

required by subsection (8), (8a) or (8b) is guilty of an offence and on conviction is liable to a fine of not less than 25 per cent of the tax payable and not more than double the amount of the tax payable.

3. Section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 4, is amended by inserting after "subsection 4 (8)" in the third line "(8a) or (8b)".

4. Section 7 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 5 and 1985, chapter 21, section 5, is further amended by adding thereto the following subsection:

Refund of
tax paid
under section
2a

(4a) If the Minister is satisfied that a person has paid tax under section 2a on a disposition of a beneficial interest in land and under section 2 upon the registration of an instrument evidencing the disposition of the beneficial interest, the Minister may, upon application by the person in the prescribed manner within three years after the date of registration of the instrument, refund the tax paid under section 2a to that person.

5. Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

Assessment
of tax,
penalties,
etc.

(1) If a person responsible for the payment of tax fails to pay it as required under this Act or if a person is liable to pay a penalty imposed by this Act, the Minister may make an assessment of the amount of the tax or penalty, together with any interest imposed thereon under this Act.

6. Subsection 15 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 9, is repealed and the following substituted therefor:

Interest on
unpaid tax

(1) If a tax imposed by this Act or any penalty assessed under this Act is not paid at the time required, interest on the unpaid amount shall be paid to the Treasurer at such rate as is prescribed by the Lieutenant Governor in Council.

Idem

(2) The Lieutenant Governor in Council may prescribe the method by which interest is to be calculated.

Restriction

(3) No interest is payable for any period of time before the 10th day of April, 1974.

Transition

7. Any return required to be filed under subsection 4 (8a) or (8b) of the said Act, as enacted by section 2 of this Act, shall be deemed to have been delivered at the time required under

the said Act if delivered on or before the thirtieth day following the day this Act receives Royal Assent.

8.—(1) Except as provided in subsection (2), this Act comes into force on the day it receives Royal Assent. Commence-
ment

(2) Sections 1 to 4 and section 6 shall be deemed to have come into force on the 18th day of July, 1989 and apply with respect to dispositions of beneficial interests in land after that date, despite the prior existence of any agreement or arrangement relating to a disposition which has not been completed as of that date. Idem

9. The short title of this Act is the *Land Transfer Tax Amendment Act, 1989*. Short title

Bill 48

An Act to amend the Land Transfer Tax Act

The Hon. R. Mancini
Minister of Revenue



1st Reading July 18th, 1989
2nd Reading December 6th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purpose of the Bill is to extend the ambit of the *Land Transfer Tax Act* to certain dispositions of beneficial interests in land, where the person receiving the beneficial interest has not registered a conveyance evidencing the disposition and has not paid tax under section 2 of the Act, in order to eliminate tax avoidance under the Act through the use of a trust.

SECTION 1. The proposed section 2a of the Act would impose a tax on certain dispositions of beneficial interests in land, payable thirty days after the disposition, equal to the amount of tax which would have been payable under section 2 if the disposition had been evidenced by a registered conveyance. Relief from taxation is given in respect of unregistered transfers of land between corporations which have the same underlying control.

SECTION 2. The proposed amendments require the delivery of a return on every disposition of a beneficial interest in land which is subject to tax under section 2a. Administrative penalties are imposed for failing to deliver a return or failing to remit any tax payable under section 2a. The Minister may extend the time for delivering the return. Failure to deliver the return would be an offence. The maximum fine has been increased from an amount equivalent to the amount of tax payable to an amount that is double the amount of tax payable.

SECTION 3. The amendment is consequential upon the amendments to section 4 of the Act.

SECTION 4. The amendment to section 7 permits a refund of tax paid under section 2a where tax with respect to the same disposition has been paid under section 2 on the registration of a conveyance evidencing the disposition.

SECTION 5. The amendment clarifies that the Minister may issue assessments for penalties and interest payable under the Act.

SECTION 6. The amendment is consequential upon the amendments to section 4 of the Act.

SECTION 7. The amendment makes section 16 of the Act (which deals with deferrals, cancellation and refunds for certain non-resident purchasers of land) apply to unregistered transfers in the same manner as registered transfers.

SECTION 8. The proposed amendment would allow regulations to be made exempting certain dispositions, certain beneficial interests in land and certain persons from the tax. ➡

Bill 48

1989

An Act to amend the Land Transfer Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

2a.—(1) For the purposes of this section, a disposition of a beneficial interest in land includes, Disposition
of beneficial
interest in
land

- (a) a sale, transfer or assignment, however effected, of any part of a beneficial interest in land; and
- (b) any change in entitlement to or any accretion to a beneficial interest in land,

but does not include,

- (c) a disposition of agricultural land, within the meaning of subsection 2 (2b);
- (d) a transfer of a beneficial interest in land which occurs by reason of the death of the owner of the interest, if the transfer is not required to be made under the terms of an agreement enforceable by or against the person legally or beneficially entitled to the interest immediately following the death of the owner;
- (e) a transfer or assignment of a beneficial interest in land by a debtor to a creditor for the purpose only of providing security for a debt or loan and a transfer or reassignment by the creditor to the debtor of the security;
- (f) a lease of land or a transfer of the interest of a lessee under a lease of land if, at the time of the disposition, the unexpired term of the lease, includ-

ing any renewals or extensions provided for in the lease, does not exceed fifty years; or

- (g) a transfer or assignment of a beneficial interest in land arising on the execution of an agreement of purchase and sale of an interest in the land, or by a subsequent assignment of such beneficial interest by a purchaser under the agreement or by an assignee thereof, where,
 - (i) the value of the consideration specified in the agreement has not been paid to or for the benefit of the transferor, or
 - (ii) the liability for the value of the consideration specified in the agreement has not been assumed by or on behalf of the transferee.

Tax on
disposition of
a beneficial
interest

(2) If there is a disposition of a beneficial interest in land, tax at the rates otherwise determined under section 2 is payable to the Treasurer on the thirtieth day after the date of the disposition as if the disposition were a conveyance of land tendered for registration.

By whom
payable

(3) The tax under subsection (2) is payable by every person who acquires a beneficial interest in land or whose beneficial interest in land is increased as a result of the disposition.


Multiple
interests

(4) If more than one person acquires a beneficial interest in land, or more than one person's beneficial interest in land is increased as a result of the disposition, each of them is liable to pay only that percentage of the tax otherwise payable under this section that reflects their proportional share of the acquisition of or increase in beneficial interest.



Exceptions

(5) No tax is payable by virtue of this section if,

- (a) an instrument evidencing the disposition of the beneficial interest in land is registered within thirty days after the date of the disposition and the tax payable under section 2 on the registration of the instrument has been paid; or
- (b) the disposition of the beneficial interest in land is prescribed as being exempt. 

Tax paid
once only

(6) If a person has paid tax under this section and proposes to register an instrument evidencing the disposition, no tax is payable under section 2 if the Minister is satisfied that the instrument,

- (a) does not transfer any beneficial interest in land to any person other than a person who has paid tax on the disposition under this section; and
- (b) does not increase any person's beneficial interest in land in excess of the beneficial interest transferred by the disposition.

(7) If the tax payable under this section has been paid, or no tax is payable under this Act, the Minister, or a person authorized in writing by the Minister, shall so verify over his or her signature on the instrument.

Verification
of Minister

(8) An instrument verified under subsection (7) may be registered without the payment of tax under section 2 and without the production of the affidavits otherwise required by this Act.

Registration
of instrument

▼
(9) If the disposition of a beneficial interest in land is from one corporation to another corporation, each of which is an affiliate of the other immediately before and at the time of the disposition, the Minister may defer the payment of the tax payable by virtue of this section by the corporation acquiring the beneficial interest if,

Deferred
payment

- (a) before the thirtieth day after the date of disposition of the beneficial interest in the land, the corporation applies to the Minister for the deferral and submits a written undertaking satisfactory to the Minister, undertaking that for a period of at least thirty-six consecutive months immediately following the date of the disposition,
 - (i) the corporation making the disposition and the corporation acquiring the beneficial interest on the disposition will continue to be affiliates of each other, and
 - (ii) the beneficial interest in the land will continue to be owned by the corporation acquiring the beneficial interest on the disposition or by a corporation that is an affiliate of that corporation and with the corporation which made the disposition of the beneficial interest in the land;
- (b) security for the tax in a form and of a kind acceptable to the Minister is furnished to the Minister; and

- (c) no conveyance or instrument evidencing the disposition has been registered.

Extension of
time

(10) The Minister may extend the time for applying for a deferral and submitting the undertaking referred to in subsection (9) if the Minister is satisfied that any delay by the corporation in applying for the deferral or submitting the undertaking was not for the purpose of attempting to delay, avoid or evade the payment of the tax.

Cancellation
to tax

(11) The Minister shall return the security furnished in respect of the deferral granted under subsection (9) and the amount of tax deferred is no longer owing by reason of this section if,


- (a) the Minister is of the opinion that the undertaking given under subsection (9) has been satisfied and no conveyance or instrument evidencing the disposition of the beneficial interest in land has been registered;
- (b) a conveyance or instrument evidencing the disposition of the beneficial interest in land to the corporation has been registered and the tax payable under section 2 on the registration has been paid; or
- (c) there has been a disposition of the beneficial interest in the land, or a conveyance of the land, by the corporation, or by an affiliate of the corporation, to a person who is not an affiliate of the corporation and tax has been paid under this Act in respect of that disposition or on registration of the conveyance, as applicable.

Dissolution
or
winding-up

(12) For the purposes of subsection (11), if a corporation was an affiliate of another corporation immediately before winding-up or dissolving, the corporation shall be considered to continue to exist and to be an affiliate of that other corporation for the purpose of determining whether any undertakings given under subsection (9) have been fulfilled with respect to any disposition of a beneficial interest in land made before the winding-up or dissolution of the corporation or in the course of any distribution of property of the corporation on the winding-up or dissolution.

Requirement
to pay tax

(13) Nothing in subsection (9) or (11) relieves any person from the payment of tax under this Act upon the registration of a conveyance which evidences the disposition of a beneficial interest in land.


(14) In this section, “affiliate” means an affiliate as described in subsection 1 (2) of the *Securities Act*.  Definition
R.S.O. 1980,
c. 466

2.—(1) Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 3 and 1985, chapter 21, section 3, is further amended by adding thereto the following subsections:


(8a) Every person liable to pay tax under section 2a shall deliver a return to the Minister, in a form approved by the Minister, on or before the day when the tax is payable under that section and shall remit the tax payable with the return. Idem

(8b) Every person who holds a legal interest in land in trust for any other person shall, within thirty days of becoming aware of any disposition of a beneficial interest in land to which section 2a applies, deliver to the Minister a return in a form approved by the Minister setting out the particulars of the disposition and such other information as the Minister may require for the purpose of determining the tax liability under this Act. Idem

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(9a) Every person who fails to deliver a return as required by subsection (8a), or who fails to remit with the return the amount of tax payable, shall pay, when assessed therefor, a penalty of an amount equal to the amount of the tax payable.  Idem

(2) The said section 4 is further amended by adding thereto the following subsection:

(8c) If a legal interest in land is held in trust for another person by more than one trustee, the return required to be delivered under subsection (8b) may be made by one or more of the trustees on behalf of all of the trustees.  More than
one trustee

(3) Subsections 4 (10) and (11) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 20, section 3, are repealed and the following substituted therefor:

(10) The Minister may extend the time for making the return required under subsection (8), (8a) or (8b) either before or after the time for making it has expired. Extension of
time for
returns

(11) In addition to any penalty otherwise payable under this Act, every person who has failed to deliver a return as required by subsection (8), (8a) or (8b) is guilty of an offence and on conviction is liable to a fine of not less than 25 per Offence

cent of the tax payable and not more than double the amount of the tax payable.

3. Section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 4, is amended by inserting after “subsection 4 (8)” in the third line “(8a) or (8b)”.

4. Section 7 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 5 and 1985, chapter 21, section 5, is further amended by adding thereto the following subsection:

Refund of
tax paid
under section
2a

(4a) If the Minister is satisfied that a person has paid tax under section 2a on a disposition of a beneficial interest in land and under section 2 upon the registration of an instrument evidencing the disposition of the beneficial interest, the Minister may, upon application by the person in the prescribed manner within three years after the date of registration of the instrument, refund the tax paid under section 2a to that person.

5. Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

Assessment
of tax,
penalties,
etc.

(1) If a person responsible for the payment of tax fails to pay it as required under this Act or if a person is liable to pay a penalty imposed by this Act, the Minister may make an assessment of the amount of the tax or penalty, together with any interest imposed thereon under this Act.

6. Subsection 15 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 9, is repealed and the following substituted therefor:

Interest on
unpaid tax

(1) If a tax imposed by this Act or any penalty assessed under this Act is not paid at the time required, interest on the unpaid amount shall be paid to the Treasurer at such rate as is prescribed by the Lieutenant Governor in Council.

Idem

(2) The Lieutenant Governor in Council may prescribe the method by which interest is to be calculated.

Restriction

(3) No interest is payable for any period of time before the 10th day of April, 1974.




7. Section 16 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10 and amended by 1985, chapter 21, section 9, is further amended by adding thereto the following subsection:

(11) Where tax is payable by virtue of section 2a, the disposition of the beneficial interest in the land shall, for the purposes of this section, be considered to be a conveyance of land deemed to be tendered for registration or registered on the thirtieth day after the date of the disposition.

Deeming
provision

8. Subsection 18 (2) of the said Act is amended by adding thereto the following clauses:

(aa) exempting from tax arising under section 2a prescribed dispositions or prescribed beneficial interests in land to which it is determined that section 2a was not intended to apply, or exempting from such tax prescribed dispositions of beneficial interests in land to persons prescribed for the purposes of this clause;

(i) prescribing anything that is required or permitted by this Act to be prescribed, determined or defined by regulation. 

9. Any return required to be filed under subsection 4 (8a) or (8b) of the said Act, as enacted by section 2 of this Act, shall be deemed to have been delivered at the time required under the said Act if delivered on or before the thirtieth day following the day this Act receives Royal Assent.

Transition


10.—(1) Except as provided in subsection (2), this Act comes into force on the day it receives Royal Assent.

Commence-
ment

(2) Sections 1 to 4 and sections 6 to 8 shall be deemed to have come into force on the 18th day of July, 1989 and apply with respect to dispositions of beneficial interests in land after that date other than,

Idem

(a) beneficial interests in land acquired pursuant to an agreement in writing to acquire the beneficial interest entered into before the 19th day of July, 1989 or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before the 19th day of July, 1989 with a public authority in Canada in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority; and

- (b) beneficial interests in land acquired before the 1st day of January, 1990 where arrangements in writing for the disposition were substantially advanced before the 19th day of July, 1989. 

Short title

11. The short title of this Act is the *Land Transfer Tax Amendment Act, 1989*.

Bill 48

(Chapter 77
Statutes of Ontario, 1989)

An Act to amend the Land Transfer Tax Act

The Hon. R. Mancini
Minister of Revenue



<i>1st Reading</i>	July 18th, 1989
<i>2nd Reading</i>	December 6th, 1989
<i>3rd Reading</i>	December 19th, 1989
<i>Royal Assent</i>	December 19th, 1989

Bill 48

1989

An Act to amend the Land Transfer Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

2a.—(1) For the purposes of this section, a disposition of a beneficial interest in land includes,

Disposition
of beneficial
interest in
land

- (a) a sale, transfer or assignment, however effected, of any part of a beneficial interest in land; and
- (b) any change in entitlement to or any accretion to a beneficial interest in land,

but does not include,

- (c) a disposition of agricultural land, within the meaning of subsection 2 (2b);
- (d) a transfer of a beneficial interest in land which occurs by reason of the death of the owner of the interest, if the transfer is not required to be made under the terms of an agreement enforceable by or against the person legally or beneficially entitled to the interest immediately following the death of the owner;
- (e) a transfer or assignment of a beneficial interest in land by a debtor to a creditor for the purpose only of providing security for a debt or loan and a transfer or reassignment by the creditor to the debtor of the security;
- (f) a lease of land or a transfer of the interest of a lessee under a lease of land if, at the time of the disposition, the unexpired term of the lease, includ-

ing any renewals or extensions provided for in the lease, does not exceed fifty years; or

- (g) a transfer or assignment of a beneficial interest in land arising on the execution of an agreement of purchase and sale of an interest in the land, or by a subsequent assignment of such beneficial interest by a purchaser under the agreement or by an assignee thereof, where,

- (i) the value of the consideration specified in the agreement has not been paid to or for the benefit of the transferor, or

- (ii) the liability for the value of the consideration specified in the agreement has not been assumed by or on behalf of the transferee.

Tax on
disposition of
a beneficial
interest

(2) If there is a disposition of a beneficial interest in land, tax at the rates otherwise determined under section 2 is payable to the Treasurer on the thirtieth day after the date of the disposition as if the disposition were a conveyance of land tendered for registration.

By whom
payable

(3) The tax under subsection (2) is payable by every person who acquires a beneficial interest in land or whose beneficial interest in land is increased as a result of the disposition.

Multiple
interests

(4) If more than one person acquires a beneficial interest in land, or more than one person's beneficial interest in land is increased as a result of the disposition, each of them is liable to pay only that percentage of the tax otherwise payable under this section that reflects their proportional share of the acquisition of or increase in beneficial interest.

Exceptions

(5) No tax is payable by virtue of this section if,

- (a) an instrument evidencing the disposition of the beneficial interest in land is registered within thirty days after the date of the disposition and the tax payable under section 2 on the registration of the instrument has been paid; or
- (b) the disposition of the beneficial interest in land is prescribed as being exempt.

Tax paid
once only

(6) If a person has paid tax under this section and proposes to register an instrument evidencing the disposition, no tax is payable under section 2 if the Minister is satisfied that the instrument,

- (a) does not transfer any beneficial interest in land to any person other than a person who has paid tax on the disposition under this section; and
- (b) does not increase any person's beneficial interest in land in excess of the beneficial interest transferred by the disposition.

(7) If the tax payable under this section has been paid, or no tax is payable under this Act, the Minister, or a person authorized in writing by the Minister, shall so verify over his or her signature on the instrument.

Verification
of Minister

(8) An instrument verified under subsection (7) may be registered without the payment of tax under section 2 and without the production of the affidavits otherwise required by this Act.

Registration
of instrument

(9) If the disposition of a beneficial interest in land is from one corporation to another corporation, each of which is an affiliate of the other immediately before and at the time of the disposition, the Minister may defer the payment of the tax payable by virtue of this section by the corporation acquiring the beneficial interest if,

Deferred
payment

- (a) before the thirtieth day after the date of disposition of the beneficial interest in the land, the corporation applies to the Minister for the deferral and submits a written undertaking satisfactory to the Minister, undertaking that for a period of at least thirty-six consecutive months immediately following the date of the disposition,
 - (i) the corporation making the disposition and the corporation acquiring the beneficial interest on the disposition will continue to be affiliates of each other, and
 - (ii) the beneficial interest in the land will continue to be owned by the corporation acquiring the beneficial interest on the disposition or by a corporation that is an affiliate of that corporation and with the corporation which made the disposition of the beneficial interest in the land;
- (b) security for the tax in a form and of a kind acceptable to the Minister is furnished to the Minister; and

- (c) no conveyance or instrument evidencing the disposition has been registered.

Extension of
time

(10) The Minister may extend the time for applying for a deferral and submitting the undertaking referred to in subsection (9) if the Minister is satisfied that any delay by the corporation in applying for the deferral or submitting the undertaking was not for the purpose of attempting to delay, avoid or evade the payment of the tax.

Cancellation
to tax

(11) The Minister shall return the security furnished in respect of the deferral granted under subsection (9) and the amount of tax deferred is no longer owing by reason of this section if,

- (a) the Minister is of the opinion that the undertaking given under subsection (9) has been satisfied and no conveyance or instrument evidencing the disposition of the beneficial interest in land has been registered;
- (b) a conveyance or instrument evidencing the disposition of the beneficial interest in land to the corporation has been registered and the tax payable under section 2 on the registration has been paid; or
- (c) there has been a disposition of the beneficial interest in the land, or a conveyance of the land, by the corporation, or by an affiliate of the corporation, to a person who is not an affiliate of the corporation and tax has been paid under this Act in respect of that disposition or on registration of the conveyance, as applicable.

Dissolution
or
winding-up

(12) For the purposes of subsection (11), if a corporation was an affiliate of another corporation immediately before winding-up or dissolving, the corporation shall be considered to continue to exist and to be an affiliate of that other corporation for the purpose of determining whether any undertakings given under subsection (9) have been fulfilled with respect to any disposition of a beneficial interest in land made before the winding-up or dissolution of the corporation or in the course of any distribution of property of the corporation on the winding-up or dissolution.

Requirement
to pay tax

(13) Nothing in subsection (9) or (11) relieves any person from the payment of tax under this Act upon the registration of a conveyance which evidences the disposition of a beneficial interest in land.

(14) In this section, “affiliate” means an affiliate as described in subsection 1 (2) of the *Securities Act*. Definition
R.S.O. 1980,
c. 466

2.—(1) Section 4 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 3 and 1985, chapter 21, section 3, is further amended by adding thereto the following subsections:

(8a) Every person liable to pay tax under section 2a shall deliver a return to the Minister, in a form approved by the Minister, on or before the day when the tax is payable under that section and shall remit the tax payable with the return. Idem

(8b) Every person who holds a legal interest in land in trust for any other person shall, within thirty days of becoming aware of any disposition of a beneficial interest in land to which section 2a applies, deliver to the Minister a return in a form approved by the Minister setting out the particulars of the disposition and such other information as the Minister may require for the purpose of determining the tax liability under this Act. Idem

(9a) Every person who fails to deliver a return as required by subsection (8a), or who fails to remit with the return the amount of tax payable, shall pay, when assessed therefor, a penalty of an amount equal to the amount of the tax payable. Idem

(2) The said section 4 is further amended by adding thereto the following subsection:

(8c) If a legal interest in land is held in trust for another person by more than one trustee, the return required to be delivered under subsection (8b) may be made by one or more of the trustees on behalf of all of the trustees. More than
one trustee

(3) Subsections 4 (10) and (11) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 20, section 3, are repealed and the following substituted therefor:

(10) The Minister may extend the time for making the return required under subsection (8), (8a) or (8b) either before or after the time for making it has expired. Extension of
time for
returns

(11) In addition to any penalty otherwise payable under this Act, every person who has failed to deliver a return as required by subsection (8), (8a) or (8b) is guilty of an offence and on conviction is liable to a fine of not less than 25 per Offence

cent of the tax payable and not more than double the amount of the tax payable.

3. Section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 4, is amended by inserting after “subsection 4 (8)” in the third line “(8a) or (8b)”.

4. Section 7 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 5 and 1985, chapter 21, section 5, is further amended by adding thereto the following subsection:

Refund of
tax paid
under section
2a

(4a) If the Minister is satisfied that a person has paid tax under section 2a on a disposition of a beneficial interest in land and under section 2 upon the registration of an instrument evidencing the disposition of the beneficial interest, the Minister may, upon application by the person in the prescribed manner within three years after the date of registration of the instrument, refund the tax paid under section 2a to that person.

5. Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

Assessment
of tax,
penalties,
etc.

(1) If a person responsible for the payment of tax fails to pay it as required under this Act or if a person is liable to pay a penalty imposed by this Act, the Minister may make an assessment of the amount of the tax or penalty, together with any interest imposed thereon under this Act.

6. Subsection 15 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 9, is repealed and the following substituted therefor:

Interest on
unpaid tax

(1) If a tax imposed by this Act or any penalty assessed under this Act is not paid at the time required, interest on the unpaid amount shall be paid to the Treasurer at such rate as is prescribed by the Lieutenant Governor in Council.

Idem

(2) The Lieutenant Governor in Council may prescribe the method by which interest is to be calculated.

Restriction

(3) No interest is payable for any period of time before the 10th day of April, 1974.

7. Section 16 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10 and amended by 1985, chapter 21, section 9, is further amended by adding thereto the following subsection:

(11) Where tax is payable by virtue of section 2a, the disposition of the beneficial interest in the land shall, for the purposes of this section, be considered to be a conveyance of land deemed to be tendered for registration or registered on the thirtieth day after the date of the disposition.

Deeming
provision

8. Subsection 18 (2) of the said Act is amended by adding thereto the following clauses:

(aa) exempting from tax arising under section 2a prescribed dispositions or prescribed beneficial interests in land to which it is determined that section 2a was not intended to apply, or exempting from such tax prescribed dispositions of beneficial interests in land to persons prescribed for the purposes of this clause;

(i) prescribing anything that is required or permitted by this Act to be prescribed, determined or defined by regulation.

9. Any return required to be filed under subsection 4 (8a) or (8b) of the said Act, as enacted by section 2 of this Act, shall be deemed to have been delivered at the time required under the said Act if delivered on or before the thirtieth day following the day this Act receives Royal Assent.

Transition

10.—(1) Except as provided in subsection (2), this Act comes into force on the day it receives Royal Assent.

Commence-
ment

(2) Sections 1 to 4 and sections 6 to 8 shall be deemed to have come into force on the 18th day of July, 1989 and apply with respect to dispositions of beneficial interests in land after that date other than,

Idem

(a) beneficial interests in land acquired pursuant to an agreement in writing to acquire the beneficial interest entered into before the 19th day of July, 1989 or as part of a lawful distribution to the public in accordance with a prospectus, preliminary prospectus or registration statement filed before the 19th day of July, 1989 with a public authority in Canada in accordance with the applicable securities legislation of Canada or of any province and, where required by law, accepted for filing by that public authority; and

- (b) beneficial interests in land acquired before the 1st day of January, 1990 where arrangements in writing for the disposition were substantially advanced before the 19th day of July, 1989.

Short title

11. The short title of this Act is the *Land Transfer Tax Amendment Act, 1989*.

10117-01
B56

Bill 49

**An Act to provide for
Freedom of Information and
Protection of Individual
Privacy in Municipalities
and Local Boards**

The Hon. M. Elston
*Chairman of the Management
Board of Cabinet*

1st Reading July 20th, 1989
2nd Reading
3rd Reading
Royal Assent

Projet de loi 49

**Loi prévoyant l'accès à
l'information et la protection
de la vie privée dans les
municipalités et les conseils
locaux**



L'honorable M. Elston
*Président du Conseil de
gestion du gouvernement*

1^{re} lecture 20 juillet 1989
2^e lecture
3^e lecture
sanction royale

EXPLANATORY NOTE

The *Freedom of Information and Protection of Privacy Act, 1987* provides that it will apply to municipalities and local boards, commissions and agencies on January 1, 1991. The Act provides for a three year delay in its application to municipalities because it was recognized that the Act would have to be amended to be effective in the municipal context. The purpose of the Bill is to apply the principles of the *Freedom of Information and Protection of Privacy Act, 1987* to municipalities and local boards, commissions and agencies.

NOTES EXPLICATIVES

La *Loi de 1987 sur l'accès à l'information et la protection de la vie privée* prévoit qu'elle s'appliquera le 1^{er} janvier 1991 aux municipalités, conseils locaux, commissions et organismes. La loi prévoit ce retard de trois ans dans son application aux municipalités parce qu'il a été reconnu que des modifications à la loi étaient nécessaires afin d'appliquer celle-ci au contexte municipal. Le présent projet de loi a pour but d'appliquer les principes de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée* aux municipalités, conseils locaux, commissions et organismes.

Bill 49**1989**

An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards

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Projet de loi 49**1989**

**Loi prévoyant l'accès à l'information et la
protection de la vie privée dans les municipalités
et les conseils locaux**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Purposes

1. The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Definitions

2.—(1) In this Act,

“head”, in respect of an institution, means the individual or body determined to be head under section 3; (“personne responsable”)

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (1) of the *Freedom of Information and Protection of Privacy Act, 1987*; (“commissaire à l’information et à la protection de la vie privée”, “commissaire”)

Article

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SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 La présente loi a pour objets :

Objets

- a) de procurer un droit d'accès à l'information régie par une institution conformément aux principes suivants :
- (i) l'information doit être accessible au public,
 - (ii) les exceptions au droit d'accès doivent être limitées et précises,
 - (iii) les décisions relatives à la divulgation de l'information devraient faire l'objet d'un examen indépendant de l'institution qui a le contrôle de l'information;
- b) de protéger la vie privée des particuliers que concernent les renseignements personnels détenus par une institution et accorder à ces particuliers un droit d'accès à ces renseignements.

2 (1) Les définitions qui suivent s'appliquent à la présente loi. Définitions

“institution” means,

- (a) a municipal corporation, including a metropolitan, district or regional municipality or the County of Oxford,
- (b) a school board, public utilities commission, hydro-electric commission, transit commission, suburban roads commission, public library board, board of health, police commission, conservation authority, district welfare administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act*,
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)

R.S.O. 1980,
c. 302

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b); (“exécution de la loi”)

“Minister” means the Chairman of the Management Board of Cabinet; (“ministre”)

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

«banque de renseignements personnels» Ensemble de renseignements personnels systématisés et susceptibles de récupération d'après le nom d'un particulier, d'après un numéro d'identification ou un signe individuel qui lui est attribué. («personal information bank»)

«commissaire à l'information et à la protection de la vie privée» et «commissaire» Le commissaire nommé en vertu du paragraphe 4 (1) de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. («Information and Privacy Commissioner», «Commissioner»)

1987, chap. 25

«document» Document qui reproduit des renseignements sans égard à leur mode de transcription, que ce soit sous forme imprimée, sur film, au moyen de dispositifs électroniques ou autrement. S'entend en outre :

- a) de la correspondance, des notes, livres, plans, cartes, dessins, diagrammes, illustrations ou graphiques, photographies, films, microfilms, enregistrements sonores, bandes magnétoscopiques, documents lisibles par machine, de tout autre matériel documentaire sans égard à leur forme ou à leurs caractéristiques et de toute reproduction de ces éléments d'information;
- b) sous réserve des règlements, du document qui n'a pas pris forme mais qui peut être constitué au moyen de matériel et de logiciel informatiques ou d'autre matériel de stockage de données, de même que des connaissances techniques normalement utilisés par une institution, à partir de documents lisibles par machine que celle-ci a en sa possession. («record»)

«exécution de la loi» S'entend :

- a) du maintien de l'ordre;
- b) des enquêtes ou inspections qui aboutissent ou peuvent aboutir à des instances devant les tribunaux judiciaires ou administratifs, si ceux-ci peuvent imposer une peine ou une sanction à l'issue de ces instances;
- c) de la tenue des poursuites visées à l'alinéa b). («law enforcement»)

«institution» :

- a) une municipalité, notamment une municipalité régionale, de communauté urbaine ou de district, ou le comté d'Oxford;

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

"personal information bank" means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual; ("banque de renseignements personnels")

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

- b) un conseil scolaire, une commission de services publics, une commission hydro-électrique, une commission de transport, une commission de voirie de banlieue, un conseil d'une bibliothèque publique, un conseil de santé, une commission de police, un office de protection de la nature, un conseil d'administration de district de l'aide sociale, une régie locale des services publics, un conseil de planification, une régie des routes locales, un village partiellement autonome ou un comité ou un conseil de gestion conjoints créés en vertu de la *Loi sur les municipalités*;

L.R.O. 1980,
chap. 302

- c) un organisme, un conseil, une commission, une personne morale ou une autre entité désignés comme institution dans les règlements. («institution»)

«ministre» Le président du Conseil de gestion du gouvernement. («Minister»)

«personne responsable» À l'égard d'une institution, s'entend du particulier ou de l'organisme qui est désigné en cette qualité en vertu de l'article 3. («head»)

«règlements» Les règlements pris en application de la présente loi. («regulations»)

«renseignements personnels» Renseignements consignés ayant trait à un particulier qui peut être identifié. S'entend notamment :

- a) des renseignements concernant la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial ou familial de celui-ci;
- b) des renseignements concernant l'éducation, les antécédents médicaux, psychiatriques, psychologiques, criminels ou professionnels de ce particulier ou des renseignements reliés à sa participation à une opération financière;
- c) d'un numéro d'identification, d'un symbole ou d'un autre signe individuel qui lui est attribué;
- d) de l'adresse, du numéro de téléphone, des empreintes digitales ou du groupe sanguin de ce particulier;
- e) de ses opinions ou de ses points de vue personnels, sauf s'ils se rapportent à un autre particulier;

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; (“document”)

“regulations” means the regulations made under this Act.
 (“règlements”)

Personal
information

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

Bodies
considered
part of
municipal
corporation

(3) Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of “institution” in subsection (1) or designated under clause (c) of the definition of “institution” in subsection (1) is deemed to be a part of the municipal corporation for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipal corporation.

Designation
of head

3.—(1) The members of the council of a municipal corporation may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipal corporation for the purposes of this Act.

Idem

(2) The members elected or appointed to the board, commission or other body that is an institution other than a municipal corporation may designate in writing from among themselves an individual or a committee of the body to act as head of the institution for the purposes of this Act.

If no
designation

(3) If no person is designated as head under this section, the head shall be,

- (a) the council, in the case of a municipal corporation;
and
- (b) the members elected or appointed to the board, commission or other body in the case of an institution other than a municipal corporation.

- f) de la correspondance ayant explicitement ou implicitement un caractère personnel et confidentiel, adressée par le particulier à une institution, de même que des réponses à cette correspondance originale susceptibles d'en révéler le contenu;
- g) des opinions et des points de vue d'une autre personne au sujet de ce particulier;
- h) du nom du particulier, s'il figure parmi d'autres renseignements personnels qui le concernent, ou si sa divulgation risque de révéler d'autres renseignements personnels au sujet du particulier. («personal information»)

(2) Les renseignements personnels excluent ceux qui concernent un particulier décédé depuis plus de trente ans.

Renseignements
personnels

(3) Les organismes, conseils, commissions, personnes morales ou autres entités qui ne sont pas mentionnés à l'alinéa b) de la définition d'«institution» au paragraphe (1) ou désignés en vertu de l'alinéa c) de cette définition, sont réputés faire partie d'une municipalité pour l'application de la présente loi si tous leurs membres, ou leurs dirigeants sont nommés ou choisis par le conseil de la municipalité, ou nommés ou choisis en vertu des pouvoirs de ce conseil.

Entités réputées faire partie d'une municipalité

3 (1) Les membres du conseil de la municipalité peuvent, par règlement municipal, désigner une personne membre du conseil ou un comité de celui-ci à titre de personne responsable de la municipalité pour l'application de la présente loi.

Désignation de la
personne
responsable

(2) Les membres élus ou nommés à un conseil, à une commission ou à un autre organisme qui est une institution, à l'exception d'une municipalité, peuvent, par écrit, désigner une personne membre de l'organisme ou un comité de celui-ci à titre de personne responsable de l'institution pour l'application de la présente loi.

Idem

(3) Si personne n'est désigné à titre de personne responsable en vertu du présent article, la personne responsable est, selon le cas :

Aucune
désignation

- a) le conseil municipal, dans le cas d'une municipalité;
- b) les membres élus ou nommés au conseil, à la commission ou à l'autre organisme, dans le cas d'une institution qui n'est pas une municipalité.

PART I

FREEDOM OF INFORMATION

ACCESS TO RECORDS

Right of
access

4.—(1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

Severability
of record

(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Obligation to
disclose

5.—(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

Contents of
notice

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part should not be disclosed, those representations will be considered by the head.

Representa-
tions

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

PARTIE I

ACCÈS À L'INFORMATION

ACCÈS AUX DOCUMENTS

4 (1) Chacun a un droit d'accès à un document ou une partie de celui-ci dont une institution a le contrôle ou la garde, sauf si le document ou la partie fait l'objet d'une exception aux termes des articles 6 à 15.

Droit d'accès

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document qui contient des renseignements faisant l'objet d'une exception en vertu des articles 6 à 15, divulgue la partie du document qui peut raisonnablement en être extraite sans divulguer ces renseignements.

Extrait du document

5 (1) Malgré toute autre disposition de la présente loi, la personne responsable qui a des motifs raisonnables et probables de croire qu'il y va de l'intérêt public, divulgue au public ou aux personnes intéressées dans les meilleurs délais, compte tenu des circonstances, le document révélateur d'un grave danger pour la santé ou la sécurité du public ou pour l'environnement.

Obligation de divulguer un document

(2) La personne responsable fait aviser dans la mesure du possible toutes les personnes concernées par les renseignements que contient le document visé au paragraphe (1) avant d'en divulguer la teneur.

Avis

(3) L'avis comporte :

Teneur de l'avis

- a) une déclaration portant que la personne responsable a l'intention de communiquer la totalité ou une partie d'un document et que cette divulgation peut avoir une incidence sur les intérêts de la personne;
- b) une description de la teneur du document ou de la partie du document qui concerne cette personne;
- c) une déclaration portant que la personne responsable tiendra compte des observations que lui présentera sans délai cette personne, si cette dernière expose les motifs pour lesquels le document ne devrait pas être divulgué, même en partie.

(4) La personne qui reçoit l'avis visé au paragraphe (2) peut présenter sans délai à la personne responsable ses observations exposant les motifs pour lesquels ce document ne devrait pas être divulgué, même en partie.

Observations

EXEMPTIONS

Draft
by-laws, etc.

6.—(1) A head may refuse to disclose a record,

- (a) that contains a draft of a by-law or a draft of a private bill; or
- (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

- (a) in the case of a record under clause (1) (a), the draft has been considered in a meeting open to the public;
- (b) in the case of a record under clause (1) (b), the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than twenty years old.

Advice or
recommendations

7.—(1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator;
- (d) an environmental impact statement or similar record;
- (e) a report or study on the performance or efficiency of an institution;

EXCEPTIONS

6 (1) Une personne responsable peut refuser de divulguer un document : Projets de règlements municipaux

- a) qui contient un projet de règlement municipal ou un avant-projet de loi privée;
- b) qui révèle l'essentiel des délibérations d'un conseil, d'une commission ou d'une autre entité ou d'un comité de ceux-ci lors d'une réunion si une loi autorise la tenue de cette réunion en l'absence du public.

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser de divulguer un document en vertu de ce paragraphe si, selon le cas : Exception

- a) le projet de règlement municipal ou l'avant-projet de loi privée a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) a);
- b) l'objet des délibérations a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) b);
- c) le document date de plus de vingt ans.

7 (1) La personne responsable peut refuser de divulguer un document qui aurait pour effet de révéler les conseils ou les recommandations émanant d'un dirigeant ou d'un employé d'une institution ou d'un expert-conseil dont les services ont été retenus par cette institution. Conseils ou recommandations

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document qui comporte l'un des éléments suivants : Exceptions

- a) de la documentation portant sur des faits;
- b) un sondage statistique;
- c) le rapport d'un estimateur;
- d) un rapport sur d'éventuelles répercussions sur l'environnement ou un document semblable;
- e) le rapport ou le résultat d'une étude relative au rendement ou à l'efficacité d'une institution;

- (f) a feasibility study or other technical study, including a cost estimate, relating to a policy or project of an institution;
- (g) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (h) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program;
- (i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;
- (j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (k) the reasons for a final decision, order or ruling of an officer or an employee of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution.

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if the record is more than twenty years old.

Law
enforcement

8.—(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

- f) une étude de faisabilité ou autre étude technique, y compris une estimation des coûts, reliée à une politique ou à un projet d'une institution;
- g) le rapport qui comporte les résultats d'une recherche effectuée sur le terrain préalablement à la formulation d'une politique proposée;
- h) la proposition ou le plan définitifs en vue de la modification d'un programme existant ou de l'établissement d'un nouveau programme d'une institution, y compris son estimation budgétaire;
- i) le rapport d'un comité ou d'une entité semblable d'une institution chargés de dresser un rapport sur une question précise;
- j) le rapport d'une entité liée à une institution et constituée dans le but de mener des enquêtes suivies de rapports ou de recommandations destinés à cette institution;
- k) les motifs à l'appui de la décision, de l'arrêté, de l'ordonnance, de l'ordre ou de la directive définitifs du fonctionnaire ou d'un employé d'une institution et rendus à la fin ou au cours de l'exercice d'un pouvoir discrétionnaire conféré par un texte législatif ou un projet mis en application par cette institution, ou en vertu de ceux-ci.

(3) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document si le document date de plus de vingt ans. Idem

8 (1) La personne responsable peut refuser de divulguer un document si la divulgation devait avoir pour effet probable : Exécution de la loi

- a) de faire obstacle à une question qui concerne l'exécution de la loi;
- b) de faire obstacle à l'enquête menée préalablement à une poursuite judiciaire ou qui y aboutira vraisemblablement;
- c) de révéler des techniques et procédés d'enquête qui sont présentement ou qui seront vraisemblablement en usage dans l'exécution de la loi;
- d) de divulguer l'identité d'une source d'information confidentielle reliée à l'exécution de la loi ou de

- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

- divulguer des renseignements obtenus uniquement de cette source;
- e) de constituer une menace à la vie ou à la sécurité physique d'un agent d'exécution de la loi ou d'une autre personne;
 - f) de priver une personne de son droit à un procès équitable ou à un jugement impartial;
 - g) de faire obstacle à l'obtention de renseignements secrets reliés à l'exécution de la loi à l'égard de certaines organisations ou de certaines personnes ou de les révéler;
 - h) de révéler un document qui a été confisqué à une personne par un agent de la paix, conformément à une loi ou à un règlement;
 - i) de compromettre la sécurité d'un immeuble ou d'un véhicule servant au transport de certains articles ou au système ou mode de protection de ces articles, dont la protection est normalement exigée;
 - j) de faciliter l'évasion d'une personne légalement détenue;
 - k) de compromettre la sécurité d'un centre de détention légale;
 - l) de faciliter la perpétration d'un acte illégal ou d'entraver la répression du crime.

(2) La personne responsable peut refuser de divulguer un document : Idem

- a) qui constitue un rapport dressé au cours de l'exécution de la loi, de l'inspection ou de l'enquête menées par un organisme chargé d'assurer et de réglementer l'observation de la loi;
- b) relié à l'exécution de la loi et dont la divulgation constituerait une infraction à une loi du Parlement;
- c) relié à l'exécution de la loi et dont la divulgation donnerait raisonnablement lieu de craindre que son auteur, la personne qui est citée ou dont les mots ont été paraphrasés dans le document, ne soit l'objet de poursuites civiles;
- d) où figurent les renseignements reliés aux antécédents, à la surveillance ou à la mise en liberté d'une

Refusal to
confirm or
deny
existence of
record
Exception

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Relations
with
governments

9.—(1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or
- (e) an international organization of states or a body of such an organization.

Idem

(2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

Third party
information

10.—(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

personne confiée au contrôle ou à la surveillance d'une administration correctionnelle.

(3) La personne responsable peut refuser de confirmer ou de nier l'existence du document visé au paragraphe (1) ou (2).

Refus de confirmer ou de nier l'existence d'un document

(4) Malgré l'alinéa (2) a), la personne responsable divulgue le document qui constitue un rapport dressé dans le cadre d'inspections de routine effectuées par un organisme autorisé à assurer et à réglementer l'observation d'une loi particulière de l'Ontario.

Exception

(5) Les paragraphes (1) et (2) ne s'appliquent pas au document qui a trait au degré de succès atteint dans le cadre d'un programme d'exécution de la loi, y compris les analyses statistiques, sauf si la divulgation de ce document est susceptible de nuire, de faire obstacle ou de porter atteinte à la poursuite des objectifs visés à ces paragraphes.

Idem

9 (1) La personne responsable refuse de divulguer un document si la divulgation devait avoir pour effet probable de révéler des renseignements confidentiels confiés à l'institution :

Rapports avec des gouvernements

- a) par le gouvernement du Canada;
- b) par le gouvernement de l'Ontario ou d'une province ou d'un territoire du Canada;
- c) par le gouvernement d'un pays ou d'un État étrangers;
- d) par un organisme d'un gouvernement visé à l'alinéa a), b) ou c);
- e) par une organisation internationale d'États ou par l'une de ses entités.

(2) La personne responsable peut divulguer un document auquel s'applique le paragraphe (1) si le gouvernement, l'organisme ou l'organisation qui a confié les renseignements à l'institution y consent.

Idem

10 (1) La personne responsable refuse de divulguer un document qui révèle un secret industriel ou des renseignements d'ordre scientifique, technique, commercial, financier ou qui ont trait aux relations de travail, dont le caractère confidentiel est implicite ou explicite et dont la divulgation aurait pour effet probable :

Renseignements de tiers

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

Consent to disclosure

- (2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

Economic and other interests

11. A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of the institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature dis-

- a) de nuire gravement à la situation concurrentielle ou d'entraver gravement les négociations contractuelles ou autres d'une personne, d'un groupe de personnes ou d'une organisation;
- b) d'interrompre la communication de renseignements semblables à l'institution, alors qu'il serait dans l'intérêt public que cette communication se poursuive;
- c) de causer des pertes ou des profits indus à une personne, un groupe de personnes, un comité, une institution ou un organisme financiers.

(2) La personne responsable peut divulguer le document visé au paragraphe (1) si la personne concernée par les renseignements y consent.

Consentement
à la
divulgaration

11 La personne responsable peut refuser de divulguer un document qui comporte :

Intérêts éco-
nomiques et
autres

- a) des secrets industriels ou des renseignements d'ordre financier, commercial, scientifique ou technique qui sont la propriété d'une institution et qui ont une valeur pécuniaire actuelle ou éventuelle;
- b) des renseignements résultant d'une recherche effectuée par l'employé d'une institution et dont la divulgation aurait pour effet probable de retirer à l'employé la primauté de la publication;
- c) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts économiques d'une institution ou à sa situation concurrentielle;
- d) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts financiers de l'institution;
- e) des positions, projets, lignes de conduite, normes ou instructions devant être observés par une institution ou pour son compte dans le cadre d'une négociation actuelle ou éventuelle;
- f) des projets relatifs à la direction du personnel ou à la gestion d'une institution qui n'ont pas encore été mis en application ou rendus publics;
- g) des renseignements, y compris les projets, les politiques ou les entreprises proposés d'une institution dont la divulgation aboutirait vraisemblablement à la divulgation prématurée d'un programme à l'état de projet ou occasionnerait des pertes ou profits indus à une personne;

closure of a pending policy decision or undue financial benefit or loss to a person;

(h) questions that are to be used in an examination or test for an educational purpose;

1981, c. 70

(i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

Solicitor-client
privilege

12. A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Danger to
safety or
health

13. A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

Personal
privacy

14.—(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

(c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

- h) des questions devant servir à un examen ou d'un test à des fins scolaires;
- i) des observations faites par une municipalité qui est partie à une question ou par une autre entité en vertu de la *Loi de 1981 sur les négociations de limites municipales*, si la question à laquelle ces observations sont reliées n'a pas été résolue aux termes de cette loi.

1981, chap. 70

12 La personne responsable peut refuser de divulguer un document protégé par le secret professionnel de l'avocat. Il en est de même d'un document élaboré par l'avocat-conseil employé ou engagé par une institution, ou pour le compte de celui-ci, qui l'utilise soit dans la communication de conseils juridiques, soit à l'occasion ou en prévision d'une instance.

Secret professionnel de l'avocat

13 La personne responsable peut refuser de divulguer le document dont la divulgation aurait pour effet probable de compromettre gravement la santé ou la sécurité d'un particulier.

Menace à la santé ou à la sécurité

14 (1) La personne responsable ne divulgue des renseignements personnels qu'au particulier concerné par ceux-ci, sauf :

Vie privée

- a) à la demande écrite ou du consentement préalables du particulier concerné si ce dernier a lui-même le droit d'y avoir accès;
- b) lors d'une situation d'urgence où il existe un risque immédiat pour la santé ou la sécurité d'un particulier, si un avis de la divulgation est ensuite envoyé par courrier au particulier concerné par les renseignements à sa dernière adresse connue;
- c) les renseignements personnels recueillis et conservés dans le but précis de constituer un document accessible au grand public;
- d) en vertu d'une loi de l'Ontario ou du Canada qui autorise expressément la divulgation;
- e) à des fins de recherche si :
 - (i) la divulgation est conforme aux conditions ou à l'utilisation envisagées au moment où ces renseignements ont été divulgués, recueillis ou obtenus,

- (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re
invasion of
privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and

- (ii) les fins de recherche à l'origine de la divulgation ne peuvent être raisonnablement atteintes que si les renseignements sont divulgués sous une forme qui permette l'identification individuelle,
- (iii) la personne devant recevoir le document a accepté de se conformer aux conditions relatives à la sécurité et au caractère confidentiel qui sont prescrites par les règlements;
- f) la divulgation ne constitue pas une atteinte injustifiée à la vie privée.

(2) Aux fins de déterminer si la divulgation de renseignements personnels constitue une atteinte injustifiée à la vie privée, la personne responsable tient compte des circonstances pertinentes et examine notamment si :

Critères :
atteinte injustifiée à la vie privée

- a) la divulgation est souhaitable parce qu'elle permet au public de surveiller de près les activités de l'institution;
- b) l'accès aux renseignements personnels peut promouvoir une amélioration de la santé et de la sécurité publiques;
- c) l'accès aux renseignements personnels rendra l'achat de biens et de services susceptible d'un choix plus judicieux;
- d) les renseignements personnels ont une incidence sur la juste détermination des droits qui concernent l'auteur de la demande;
- e) le particulier visé par les renseignements personnels risque d'être injustement lésé dans ses intérêts pécuniaires ou autres;
- f) les renseignements personnels sont d'une nature très délicate;
- g) l'exactitude et la fiabilité des renseignements personnels sont douteuses;
- h) le particulier visé par les renseignements personnels les a communiqués à l'institution à titre confidentiel;

- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Presumed
invasion of
privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

Limitation

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or

- i) la divulgation est susceptible de porter injustement atteinte à la réputation d'une personne dont il est fait mention dans le document.

(3) Est présumée constituer une atteinte injustifiée à la vie privée, la divulgation de renseignements personnels :

Atteinte présumée à la vie privée

- a) relatifs aux antécédents, au diagnostic, à la maladie, au traitement ou à l'évaluation d'ordre médical, psychiatrique ou psychologique;
- b) qui ont été recueillis et peuvent être identifiés comme partie du dossier d'une enquête reliée à une contravention possible à la loi, sauf dans la mesure où la divulgation est nécessaire aux fins d'instituer des poursuites judiciaires ou de continuer l'enquête;
- c) relatifs à l'admissibilité aux prestations d'aide sociale ou de service social ou à l'établissement du niveau des prestations;
- d) qui ont trait aux antécédents professionnels ou académiques;
- e) qui ont été relevés dans une déclaration d'impôt ou recueillis à des fins de perception fiscale;
- f) qui précisent la situation financière, le revenu, l'actif, le passif, la situation nette, les soldes bancaires, les antécédents ou les activités d'ordre financier ou la solvabilité d'un particulier;
- g) qui comportent des recommandations ou des évaluations personnelles, des renseignements ayant trait à la moralité ou à des évaluations de personnel;
- h) qui indiquent la race, l'origine ethnique, l'orientation sexuelle ou les croyances ou allégeances religieuses ou politiques du particulier.

(4) Malgré le paragraphe (3), ne constitue pas une atteinte injustifiée à la vie privée, la divulgation portant sur les renseignements suivants :

Restrictions

- a) le classement, les barèmes de traitement et d'avantages sociaux ou les responsabilités professionnelles d'un particulier qui est ou a été dirigeant ou employé d'une institution;

- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

Refusal to confirm or deny existence of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

Information soon to be published

15. A head may refuse to disclose a record if,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Exemptions not to apply

16. An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

ACCESS PROCEDURE

Request

17.—(1) A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

Sufficiency of detail

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Definition
1987, c. 25

18.—(1) In this section, “institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act, 1987*. (“institution”)

Request to be forwarded

(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- b) les modalités d'ordre financier ou autres d'un contrat de louage de services personnels intervenu entre un particulier et une institution.

(5) La personne responsable peut refuser de confirmer ou de nier l'existence d'un document dont la divulgation constituerait une atteinte injustifiée à la vie privée.

Refus de confirmer ou de nier l'existence d'un document

15 La personne responsable peut refuser de divulguer un document si, selon le cas :

Publication prochaine des renseignements

- a) le document ou les renseignements qu'il comporte ont déjà été publiés ou sont accessibles au public;
- b) la personne responsable a des motifs raisonnables de croire que le document ou les renseignements seront publiés par une institution dans les quatre-vingt-dix jours de la demande ou au cours de la période de temps additionnelle nécessaire à leur impression ou à leur traduction à cette fin.

16 Les exceptions à la divulgation visées aux articles 7, 9, 10, 11, 13 et 14 ne s'appliquent pas si la nécessité manifeste de divulguer le document dans l'intérêt public l'emporte sans conteste sur les fins visées par les exceptions.

Non-application des exceptions

PROCÉDURE D'ACCÈS

17 (1) L'auteur de la demande d'accès à un document s'adresse par écrit à l'institution qui, à son avis, a la garde ou le contrôle du document. Il fournit les détails suffisants qui permettront à un employé expérimenté de l'institution à la suite d'une démarche normale, d'identifier le document.

Demande

(2) Dans le cas d'insuffisance de la description du document requis, l'institution en avise l'auteur de la demande et lui fournit l'aide nécessaire afin de formuler celle-ci à nouveau et de la rendre conforme au paragraphe (1).

Détails suffisants

18 (1) Dans le présent article, «institution» s'entend en outre d'une institution au sens de l'article 2 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. («institution»)

Définition 1987, chap. 25

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document dont l'institution n'a ni la garde ni le contrôle, fait les recherches raisonnables afin de déterminer si une autre institution en a la garde ou le contrôle. Si la personne responsable détermine que tel est le cas, la personne responsable, dans les quinze jours de la réception de la demande :

Acheminement de la demande

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution.

Transfer of
request

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

Greater
interest

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

When
transferred
request
deemed
made

(5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

Notice by
head

19. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20 and 21, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

Extension of
time

20.—(1) A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

- a) d'une part, renvoie celle-ci à l'institution concernée;
- b) d'autre part, avise par écrit l'auteur de la demande du renvoi à une autre institution.

(3) La personne responsable de l'institution qui reçoit une demande d'accès à un document, lequel, à son avis, intéresse davantage une autre institution, peut transférer la demande, et, si nécessaire, le document lui-même à cette autre institution dans les quinze jours de la réception de la demande. La personne responsable qui effectue ce transfert en informe alors par écrit l'auteur de la demande.

Transfert de la demande

(4) Pour l'application du paragraphe (3), un document intéresse davantage une institution autre que celle qui reçoit la demande d'accès si, selon le cas :

Ressort d'une autre institution

- a) le document a d'abord été constitué par l'autre institution ou pour son compte;
- b) l'autre institution a reçu la première ce document ou une copie de celui-ci, si le document n'a pas d'abord été constitué par une institution ou pour son compte.

(5) La demande renvoyée ou transférée en vertu du paragraphe (2) ou (3) est réputée présentée à l'autre institution le jour de sa réception par l'institution originale.

Date de la demande

19 Sous réserve des articles 20 et 21, lorsqu'une personne présente une demande d'accès à un document, la personne responsable de l'institution qui reçoit la demande ou, si la demande fait l'objet d'un renvoi ou d'un transfert aux termes de l'article 18, la personne responsable de l'institution destinataire du renvoi ou du transfert, prend, dans les trente jours de sa réception, les mesures suivantes :

Avis donné par la personne responsable

- a) elle avise par écrit l'auteur de la demande qu'elle lui donnera ou non accès à la totalité ou à une partie du document;
- b) si l'accès doit être accordé, elle donne accès à la totalité ou à une partie du document à l'auteur de la demande et prend les mesures nécessaires à sa production, si besoin est.

20 (1) La personne responsable peut proroger le délai imparti à l'article 19 pour un temps raisonnable compte tenu des circonstances si, selon le cas :

Prorogation du délai

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

Notice of
extension

(2) A head who extends the time limit under subsection (1) shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension.

Notice to
affected
person

21.—(1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14 (1) (f).

Contents of
notice

(2) The notice shall contain,

- (a) a statement that the head intends to disclose a record or part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to

- a) la demande comporte la production ou la consultation d'un grand nombre de documents et que l'observation du délai imparti aurait pour effet d'entraver abusivement les activités normales de l'institution;
- b) il est nécessaire d'avoir des consultations avec une personne à l'extérieur de l'institution afin de répondre à la demande et que ces consultations ne peuvent pas être normalement terminées avant l'expiration du délai imparti.

(2) La personne responsable qui proroge le délai imparti aux termes du paragraphe (1) en informe par écrit l'auteur de la demande et précise notamment :

Avis de
prorogation

- a) la durée du délai prorogé;
- b) les motifs à l'appui;
- c) le fait que l'auteur de la demande peut s'adresser au commissaire afin d'obtenir une révision de la prorogation.

21 (1) Avant de permettre l'accès à un document, la personne responsable, donne à la personne concernée un avis écrit conformément au paragraphe (2), lorsque la personne responsable a des raisons de croire :

Avis à la
personne
concernée

- a) que le document comporte certains renseignements visés au paragraphe 10 (1) susceptibles de porter atteinte aux intérêts d'une personne autre que l'auteur de la demande;
- b) qu'il s'agit de renseignements personnels dont la divulgation pourrait constituer une atteinte injustifiée à la vie privée pour l'application de l'alinéa 14 (1) f).

(2) L'avis comporte :

Teneur de
l'avis

- a) une mention que la personne responsable a l'intention de divulguer la totalité ou une partie d'un document susceptible de porter atteinte aux intérêts de la personne concernée;
- b) un exposé de la teneur de la totalité ou de la partie du document qui a trait à cette personne;
- c) une mention que la personne concernée peut, dans les vingt jours de l'envoi de l'avis, faire des observa-

the head as to why the record or part should not be disclosed.

Time for
notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, if there has been an extension of a time limit under subsection 20 (1), within that extended time limit.

Notice of
delay

(4) A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

- (a) that the disclosure of the record or part may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record.

Representa-
tion re
disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Representa-
tion in
writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

Decision re
disclosure

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within thirty days after the notice under subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given.

Notice of
head's
decision to
disclose

(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

tions à la personne responsable exposant les raisons pour lesquelles le document ne devrait pas être divulgué en totalité ou en partie.

(3) L'avis visé au paragraphe (1) est donné dans les trente jours de la réception de la demande d'accès, ou au cours du délai prorogé aux termes du paragraphe 20 (1). Délai pour donner l'avis

(4) La personne responsable qui donne un avis en vertu du paragraphe (1) donne en outre à l'auteur de la demande un avis écrit du retard qui énonce les faits suivants : Avis du retard

- a) la divulgation de la totalité ou d'une partie de ce document peut porter atteinte aux intérêts d'un tiers;
- b) l'occasion est fournie à ce tiers de faire des observations relativement à la divulgation du document;
- c) la personne responsable rendra dans les trente jours sa décision de divulguer ou non le document.

(5) La personne concernée par les renseignements peut, dans les vingt jours de l'envoi de l'avis donné en vertu du paragraphe (1), faire des observations à la personne responsable exposant les raisons pour lesquelles le document ou la partie de celui-ci ne devrait pas être divulgué. Observations relatives à la divulgation

(6) Les observations faites aux termes du paragraphe (5) le sont par écrit sauf si la personne responsable permet qu'elles soient faites de vive voix. Observations par écrit

(7) Dans les trente jours de l'envoi de l'avis visé au paragraphe (1), la personne responsable rend sa décision de permettre ou non la divulgation du document ou de la partie de celui-ci et informe par écrit de sa décision la personne concernée par les renseignements ainsi que l'auteur de la demande. Toutefois, la personne responsable ne prend pas ces mesures avant la première des éventualités suivantes à se réaliser : Décision de permettre la divulgation

- a) la réception de la réponse à l'avis donné à la personne concernée par les renseignements;
- b) l'expiration d'un délai de vingt et un jours après l'envoi de l'avis.

(8) La personne responsable qui décide de divulguer un document ou une partie de celui-ci en vertu du paragraphe (7) mentionne dans l'avis : Avis de la décision de la personne responsable

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and
- (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within thirty days after the notice is given.

Access to be
given unless
affected
person
appeals

(9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Contents of
notice of
refusal

22.—(1) Notice of refusal to give access to a record or part under section 19 shall set out,

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
- (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(2) A head who refuses to confirm or deny the existence of a record as provided in subsection 8 (3) (law enforcement) or subsection 14 (5) (unjustified invasion of personal privacy) shall state in the notice given under section 19,

- a) d'une part, que la personne concernée par les renseignements peut interjeter appel de la décision devant le commissaire dans les trente jours de l'envoi de l'avis;
- b) d'autre part, que l'auteur de la demande aura accès à la totalité ou à une partie du document à moins qu'un appel de la décision ne soit interjeté dans les trente jours de l'envoi de l'avis.

(9) À la suite de sa décision à cet effet prise en vertu du paragraphe (7), la personne responsable donne à l'auteur de la demande, dans les trente jours de l'envoi de l'avis en vertu du paragraphe (7), accès au document ou à une partie de celui-ci, à moins que le commissaire n'ait reçu une demande de révision de la décision de la part de la personne concernée par les renseignements.

Accès permis
sauf appel

22 (1) L'avis du refus de donner accès à la totalité ou à une partie du document en vertu de l'article 19, énonce les faits suivants :

Teneur de
l'avis de
refus

- a) si le document n'existe pas :
 - (i) qu'il n'existe pas de tel document,
 - (ii) que l'auteur de la demande peut interjeter appel devant le commissaire de la question de l'existence du document;
- b) si le document existe :
 - (i) la disposition précise de la présente loi à l'appui du refus,
 - (ii) le motif pour lequel la disposition s'applique au document,
 - (iii) le nom et le titre de l'auteur de la décision,
 - (iv) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire.

(2) La personne responsable qui refuse de confirmer ou de nier l'existence d'un document aux termes du paragraphe 8 (3) (exécution de la loi) ou du paragraphe 14 (5) (atteinte injustifiée à la vie privée), mentionne dans l'avis donné en vertu de l'article 19 les points suivants :

Idem

- (a) that the head refuses to confirm or deny the existence of the record;
- (b) the provision of this Act on which the refusal is based;
- (c) the name and office of the person responsible for making the decision; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(3) A head who refuses to disclose a record or part under subsection 21 (7) shall state in the notice given under subsection 21 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Deemed refusal

(4) A head who fails to give the notice required under section 19 or subsection 21 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

Copy of record

23.—(1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

Access to original record

(2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

Copy of part

(3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

- a) le fait que la personne responsable refuse de confirmer ou de nier l'existence du document;
- b) la disposition de la présente loi sur laquelle se fonde le refus;
- c) le nom et le titre de l'auteur de la décision;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(3) La personne responsable qui refuse de divulguer un document en totalité ou en partie en vertu du paragraphe 21 (7), mentionne dans l'avis donné en vertu de ce paragraphe les points suivants :

Idem

- a) la disposition précise de la présente loi à l'appui du refus;
- b) le motif pour lequel la disposition visée à l'alinéa a) s'applique au document;
- c) le nom et le titre de l'auteur de la décision de refuser l'accès;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(4) La personne responsable qui, relativement à un document, fait défaut de donner l'avis qu'exige l'article 19 ou le paragraphe 21 (7), est réputée avoir donné avis de son refus de permettre l'accès au document le dernier jour du délai imparti à cette fin.

Avis réputé donné du refus

23 (1) Sous réserve du paragraphe (2), il est délivré à la personne à qui il y est donné accès en vertu de la présente loi, copie de la totalité ou d'une partie du document visé, sauf si la nature ou la longueur de ce document en rendent la reproduction trop difficile. Dans ce cas, il est donné à cette personne l'occasion de consulter la totalité ou la partie du document.

Copie du document

(2) La personne responsable, dans la mesure du possible, donne à la personne qui en fait la demande, l'occasion de consulter un document en totalité ou en partie.

Accès à l'original du document

(3) Si une personne consulte un document en totalité ou en partie et souhaite en faire copier des extraits, il lui est donné copie de ces extraits sauf si la nature ou la longueur de ces extraits en rendent la reproduction trop difficile.

Extraits

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication
of
information
re institutions

24.—(1) The Minister shall cause to be published a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made; and
- (b) the title of the head of the institution.

Idem

(2) The Minister shall cause the compilation to be published within one year of the coming into force of this Act and at least once every three years thereafter.

Information
available for
inspection

25.—(1) A head shall cause to be made available for inspection and copying by the public information containing,

- (a) a description of the organization and responsibilities of the institution;
- (b) a list of the general classes or types of records in the custody or control of the institution;
- (c) the title, business telephone and business address of the head; and
- (d) the address to which a request under this Act should be made.

Idem

(2) The head shall ensure that the information made available is amended as required to ensure its accuracy.

Annual
report of
head

26.—(1) A head shall make an annual report, in accordance with subsection (2), to the Commissioner.

Contents of
report

(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;

PUBLICATION ET ACCESSIBILITÉ DE L'INFORMATION

24 (1) Le ministre fait publier un répertoire des institutions, qui indique à l'égard de chacune :

Publication de l'information concernant les institutions

- a) l'endroit où doit être présentée la demande d'accès à un document;
- b) le titre de la personne responsable de l'institution.

(2) Le ministre fait publier le répertoire dans l'année qui suit l'entrée en vigueur de la présente loi et au moins une fois tous les trois ans par la suite.

Idem

25 (1) Une personne responsable rend accessible au public un dossier de renseignements afin que le public puisse l'examiner et en prendre des copies. Le dossier comporte :

Renseignements rendus accessibles au public

- a) un exposé de la structure et des responsabilités de l'institution;
- b) un répertoire des catégories générales ou des genres de documents dont l'institution a la garde ou le contrôle;
- c) les titre, adresse et numéro de téléphone d'affaires de la personne responsable;
- d) l'adresse à laquelle une demande aux termes de la présente loi doit être présentée.

(2) La personne responsable veille à ce que les renseignements rendus accessibles au public soient modifiés en cas de besoin afin d'en assurer l'exactitude.

Idem

26 (1) La personne responsable présente un rapport annuel au commissaire conformément au paragraphe (2).

Rapport annuel de la personne responsable

(2) Le rapport préparé en vertu du paragraphe (1) fournit les précisions suivantes :

Teneur du rapport

- a) le nombre de demandes d'accès aux documents présentées à l'institution en vertu de la présente loi;
- b) le nombre de refus de divulguer un document de la part de la personne responsable, les dispositions de la présente loi à l'appui de ce refus, ainsi que la fréquence de renvoi à chacune des dispositions invoquées;

- (c) the number of uses or purposes for which personal information is disclosed if the use or purpose is not included in the statements of uses and purposes set forth under clauses 34 (1) (d) and (e);
- (d) the amount of fees collected by the institution under section 45; and
- (e) any other information indicating an effort by the institution to put into practice the purposes of this Act.

PART II

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application
of Part

27. This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

Definition

28.—(1) In this section and in section 29, “personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act. (“renseignements personnels”)

Collection of
personal
information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of
collection

29.—(1) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*;
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);

- c) la quantité de fins et d'usages non visés par les relevés énoncés aux alinéas 34 (1) d) et e) pour lesquels des renseignements personnels sont divulgués;
- d) le montant des droits perçus par l'institution aux termes de l'article 45;
- e) les renseignements relatifs aux mesures prises par l'institution afin de réaliser les objets de la présente loi.

PARTIE II

PROTECTION DE LA VIE PRIVÉE

COLLECTE ET CONSERVATION DES RENSEIGNEMENTS PERSONNELS

27 La présente partie ne s'applique pas aux renseignements personnels qui sont conservés dans le but de constituer un document accessible au grand public.

Champ d'application de la partie

28 (1) Dans le présent article et dans l'article 29, «renseignements personnels» s'entend en outre des renseignements qui ne sont pas consignés et qui constituent, par ailleurs, des renseignements personnels au sens de la présente loi. («personal information»)

Définition

(2) Nul ne doit recueillir des renseignements personnels pour le compte d'une institution à moins d'y être autorisé expressément par une loi, ou à moins que ces renseignements servent à l'exécution de la loi ou soient nécessaires au bon exercice d'une activité autorisée par la loi.

Collecte des renseignements personnels

29 (1) L'institution ne doit recueillir les renseignements personnels que directement du seul particulier concerné par ces renseignements, sauf si :

Mode de collecte des renseignements

- a) ce particulier a autorisé un autre mode de collecte;
- b) leur divulgation à l'institution concernée est autorisée aux termes de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*;
- c) leur mode de collecte a reçu l'autorisation du commissaire en vertu de l'alinéa 46 c);

1987, chap. 25

- R.S.O. 1980,
c. 89
- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
 - (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
 - (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
 - (g) the information is collected for the purpose of law enforcement; or
 - (h) another manner of collection is authorized by or under a statute.

Notice to
individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Exception

(3) Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8 (1) or (2) (law enforcement);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required.

Retention of
personal
information

30.—(1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

- d) les renseignements sont consignés dans le rapport d'un organisme de renseignements au sens de la *Loi sur les renseignements concernant le consommateur*;
- e) les renseignements sont recueillis aux fins de déterminer les candidats possibles à une distinction ou à un prix en reconnaissance de réalisations exceptionnelles ou de services éminents;
- f) les renseignements sont recueillis aux fins d'une instance poursuivie ou envisagée devant soit un tribunal, soit un tribunal administratif à caractère judiciaire ou quasi-judiciaire;
- g) les renseignements sont recueillis aux fins de l'exécution de la loi;
- h) un autre mode de collecte des renseignements est autorisé par une loi ou en vertu de celle-ci.

L.R.O. 1980,
chap. 89

(2) Si les renseignements personnels sont recueillis pour le compte d'une institution, la personne responsable informe au moyen d'un avis le particulier concerné par les renseignements des faits suivants :

Avis
particulier

- a) l'autorité légale invoquée à cette fin;
- b) les fins principales auxquelles doivent servir ces renseignements personnels;
- c) les titre, adresse et numéro de téléphone d'affaires d'un fonctionnaire ou d'un employé de l'institution qui peut renseigner le particulier au sujet de cette collecte.

(3) Le paragraphe (2) ne s'applique pas si, selon le cas :

Exception

- a) la personne responsable peut refuser de divulguer les renseignements personnels en vertu du paragraphe 8 (1) ou (2) (exécution de la loi);
- b) le ministre accorde une dispense relativement à l'avis;
- c) les règlements prévoient que l'avis n'est pas requis.

30 (1) L'institution qui s'est servie des renseignements personnels les conserve durant le délai prescrit par les règlements afin de fournir l'occasion au particulier concerné par ces renseignements d'y obtenir lui-même accès.

Conservation
des ren-
seignements
personnels

Standard of
accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes.

Disposal of
personal
information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations.

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of
personal
information

31. An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*.

1987, c. 25

Where
disclosure
permitted

32. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,

(2) La personne responsable d'une institution veille à ce que seuls soient utilisés les renseignements personnels consignés dans ses documents qui sont exacts et à jour.

Norme
d'exactitude

(3) Le paragraphe (2) ne s'applique pas aux renseignements personnels recueillis aux fins de l'exécution de la loi.

Exception

(4) La personne responsable dispose des renseignements personnels dont l'institution a le contrôle conformément aux règlements.

Disposition
des ren-
seignements
personnels

UTILISATION ET DIVULGATION DES RENSEIGNEMENTS PERSONNELS

31 Une institution ne doit pas utiliser les renseignements personnels dont elle a la garde ou le contrôle, sauf :

Utilisation des
renseigne-
ments
personnels

- a) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur utilisation;
- b) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- c) à des fins qui justifient leur divulgation à l'institution en vertu de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*.

1987, chap. 25

32 Une institution ne doit pas divulguer les renseignements personnels dont elle a la garde ou le contrôle, sauf :

Divulgation
permise

- a) conformément à la partie I;
- b) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur divulgation;
- c) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- d) si la divulgation est faite au dirigeant ou à l'employé d'une institution à qui ce document est nécessaire dans l'exercice de ses fonctions et que cette divulgation est essentielle et appropriée à l'acquittement des fonctions de l'institution;
- e) afin de se conformer aux dispositions d'une loi de la Législature ou du Parlement, à un accord ou à un arrangement intervenus en vertu d'une telle loi ou à un traité;
- f) si la divulgation est faite par une institution chargée de l'exécution de la loi :

- (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
- (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

Consistent
purpose

33. The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure.

PERSONAL INFORMATION BANKS

Personal
information
bank index

34.—(1) A head shall make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;

- (i) soit à l'organisme semblable d'un pays étranger en vertu d'un arrangement, d'un accord écrit, d'un traité ou d'un pouvoir conféré par une loi,
 - (ii) soit à un autre organisme du Canada chargé de l'exécution de la loi;
- g) si la divulgation est faite à une institution quelconque ou à un organisme chargé de l'exécution de la loi au Canada aux fins de faciliter une enquête menée en vue d'une action en justice ou qui aboutira vraisemblablement à une action en justice;
 - h) lors d'une situation d'urgence ayant une incidence sur la santé ou la sécurité d'un particulier, si un avis de la divulgation est envoyé sans tarder au particulier concerné par les renseignements à sa dernière adresse connue;
 - i) dans une situation relative à un événement de famille afin de faciliter la communication avec un proche parent ou un ami d'un particulier blessé, malade ou décédé;
 - j) au ministre;
 - k) au commissaire à l'information et à la protection de la vie privée;
 - l) au gouvernement du Canada ou au gouvernement de l'Ontario, afin de faciliter la vérification des programmes cofinancés.

33 Seule constitue une fin compatible au sens des alinéas 31 b) et 32 c), la fin invoquée à l'appui de l'utilisation ou de la divulgation de renseignements personnels à laquelle le particulier concerné par les renseignements pourrait raisonnablement s'attendre lorsque ceux-ci ont été obtenus du particulier directement.

Fin
compatible

BANQUES DE RENSEIGNEMENTS PERSONNELS

34 (1) La personne responsable rend accessible pour fin d'examen par le public un répertoire des banques de données de renseignements personnels dont l'institution a la garde ou le contrôle et qui indique à l'égard de chaque banque :

Répertoire
des banques
de ren-
seignements
personnels

- a) son nom et le lieu où elle est située;
- b) l'autorité légale invoquée à l'appui de sa constitution;

- (c) the types of personal information maintained in it;
- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

Ensure
accuracy

(2) The head shall ensure that the index is amended as required to ensure its accuracy.

Inconsistent
use or
disclosure

35.—(1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 34 (1) (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 34 (1) (e).

Idem

(2) A record of use or disclosure under subsection (1) forms part of the personal information to which it is attached or linked.

RIGHT OF INDIVIDUALS TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

Right of
access to
personal
information

36.—(1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

- c) le genre de renseignements personnels qui y sont conservés;
- d) les usages réguliers faits de ces renseignements personnels;
- e) les personnes à qui les renseignements personnels sont divulgués de façon régulière;
- f) les catégories de particuliers au sujet desquels des renseignements personnels sont conservés;
- g) les politiques et pratiques applicables à la conservation et à la suppression des renseignements personnels.

(2) La personne responsable veille à ce que le répertoire soit modifié en cas de besoin afin d'en assurer l'exactitude. Assurance de l'exactitude

35 (1) La personne responsable annexe ou incorpore aux renseignements personnels dans une banque de renseignements personnels : Utilisation ou divulgation incompatibles

- a) un document décrivant l'usage fait de ces renseignements personnels à une fin autre que celle décrite à l'alinéa 34 (1) d);
- b) un document décrivant la divulgation faite de ces renseignements personnels à une personne autre que celle décrite à l'alinéa 34 (1) e).

(2) Un document visé au paragraphe (1) qui décrit l'usage ou la divulgation fait partie des renseignements personnels auxquels il est annexé ou incorporé. Idem

DROIT DU PARTICULIER CONCERNÉ PAR LES RENSEIGNEMENTS PERSONNELS À L'ACCÈS ET À LA RECTIFICATION

36 (1) Tout particulier a un droit d'accès : Droit d'accès aux renseignements personnels

- a) aux renseignements personnels qui le concernent qui sont mis en mémoire dans une banque de renseignements personnels dont une institution a la garde ou le contrôle;
- b) aux autres renseignements personnels qui le concernent dont une institution a la garde ou le contrôle et que le particulier indique avec suffisamment de précision pour permettre à l'institution de les récupérer sans trop de difficulté.

Right of
correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Request

37.—(1) An individual seeking access to personal information about the individual shall make a request for access in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Access
procedures

(2) Subsections 4 (2) and 17 (2) and sections 18, 19, 20, 21, 22 and 23 apply with necessary modifications to a request made under subsection (1).

Compre-
hensible
form

(3) If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general conditions under which the personal information is stored and used.

Exemptions

38. A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;
- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution

(2) Tout particulier à qui est accordé l'accès aux renseignements personnels aux termes du paragraphe (1) a le droit :

Droit à la rectification

- a) de demander la rectification des renseignements personnels si, à son avis, ceux-ci sont erronés ou incomplets;
- b) d'exiger que soit annexée à ces renseignements une déclaration de désaccord qui fasse mention de la rectification demandée mais non effectuée;
- c) d'exiger que la personne ou l'entité à qui les renseignements ont été divulgués au cours de l'année qui précède la demande de rectification ou la déclaration de désaccord soient avisées de ceux-ci.

37 (1) Le particulier qui sollicite l'accès aux renseignements personnels qui le concernent en fait la demande par écrit à l'institution qui, à son avis, a le contrôle ou la garde de ces renseignements. Il identifie la banque de renseignements personnels ou identifie d'une autre façon l'endroit où sont consignés les renseignements.

Demande

(2) Les paragraphes 4 (2) et 17 (2) ainsi que les articles 18, 19, 20, 21, 22 et 23 s'appliquent avec les adaptations nécessaires à la demande présentée aux termes du paragraphe (1).

Procédure d'accès

(3) La personne responsable veille à ce que les renseignements personnels soient communiqués, le cas échéant, au particulier sous une forme intelligible et d'une façon qui permet de connaître les conditions générales de leur stockage et de leur utilisation.

Forme intelligible

38 La personne responsable peut refuser de divulguer au particulier concerné les renseignements personnels :

Exceptions

- a) dont la divulgation est régie par l'article 6, 7, 8, 9, 10, 11, 12, 13 ou 15;
- b) si la divulgation constitue une atteinte injustifiée à la vie privée d'un autre particulier;
- c) qui sont constitués de documents d'appréciation ou d'avis divers recueillis dans le seul but d'établir l'aptitude, l'admissibilité ou les qualités requises relativement à un emploi ou à l'attribution de contrats et d'autres avantages par une institution si la divulgation avait pour effet de révéler la source de renseignements d'une institution dans une situation où il est normal de présumer que l'identité de cette source devait rester secrète;

in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;

- (d) that is medical information if the disclosure could reasonably be expected to prejudice the mental or physical health of the individual; or
- (e) that is a research or statistical record.

PART III

APPEAL

Right to
appeal

39.—(1) A person may appeal any decision of a head under this Act to the Commissioner if,

- (a) the person has made a request for access to a record under subsection 17 (1);
- (b) the person has made a request for access to personal information under subsection 37 (1);
- (c) the person has made a request for correction of personal information under subsection 36 (2); or
- (d) the person is given notice of a request under subsection 21 (1).

Time for
application

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

Notice of
application
for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned and any other affected person of the notice of appeal.

Mediator to
try to effect
settlement

40. The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal.

Inquiry

41.—(1) If a settlement is not effected under section 40, the Commissioner shall conduct an inquiry to review the head's decision.

R.S.O. 1980,
c. 484
not to apply

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1).

Inquiry in
private

(3) The inquiry may be conducted in private.

- d) d'ordre médical dont la divulgation aurait pour effet probable de porter atteinte à la santé mentale ou physique du particulier;
- e) qui constituent un dossier de recherche ou un dossier statistique.

PARTIE III

APPELS

39 (1) Une personne peut interjeter appel devant le commissaire de toute décision d'une personne responsable si, selon le cas : Droit d'appel

- a) la personne a présenté une demande d'accès à un document aux termes du paragraphe 17 (1);
- b) la personne a présenté une demande d'accès à des renseignements personnels aux termes du paragraphe 37 (1);
- c) la personne a présenté une demande de rectification des renseignements personnels aux termes du paragraphe 36 (2);
- d) la personne a reçu l'avis d'une demande aux termes du paragraphe 21 (1).

(2) L'appel aux termes du paragraphe (1) est interjeté par le dépôt auprès du commissaire d'un avis d'appel écrit, dans les trente jours de l'avis de la décision qui en fait l'objet. Délai imparti

(3) Dès la réception de l'avis d'appel, le commissaire en informe la personne responsable de l'institution visée et toute personne intéressée. Avis d'appel

40 Le commissaire peut autoriser un médiateur à enquêter sur les circonstances qui entourent l'appel et à tenter de parvenir au règlement de la question qui en fait l'objet. Tentative de règlement par le médiateur

41 (1) Si un règlement n'est pas intervenu en vertu de l'article 40, le commissaire mène une enquête afin de réexaminer la décision de la personne responsable. Enquête

(2) La *Loi sur l'exercice des compétences légales* ne s'applique pas à l'enquête menée en vertu du paragraphe (1). Non-application du chap. 484 des L.R.O. de 1980

(3) L'enquête peut se dérouler à huis clos. Enquête à huis clos

Powers of
Commissioner

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Record not
retained by
Commissioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4).

Examination
on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of
entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination
under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry and, for that purpose, the Commissioner may administer an oath.

Evidence
privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

Idem

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.

R.S.C. 1985,
c. C-5

Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

Representations

(13) The person who requested access to the record, the head of the institution concerned and any affected party shall

- (4) Malgré les parties I et II de la présente loi, et toute autre loi ou privilège, le commissaire peut, dans le cadre d'une enquête, exiger que lui soit communiqué un document dont une institution a la garde ou le contrôle et en faire l'examen. Il peut de même aux fins de l'enquête pénétrer dans les locaux d'une institution et en faire l'inspection. Pouvoirs du commissaire
- (5) Le commissaire ne doit pas conserver les renseignements consignés dans un document communiqué en vertu du paragraphe (4). Le commissaire ne conserve pas le document
- (6) Malgré le paragraphe (4), la personne responsable peut exiger que le commissaire consulte sur place l'original du document. Consultation sur place
- (7) Avant de pénétrer dans des locaux en vertu du paragraphe (4), le commissaire informe la personne responsable de l'institution qui les occupe de l'objet de sa visite. Avis de consultation
- (8) Le commissaire peut assigner à comparaître et interroger sous serment la personne qui, à son avis, pourrait avoir des renseignements relatifs à l'enquête. Il peut faire prêter serment à cette fin. Interrogatoire sous serment
- (9) Les paroles prononcées, les renseignements fournis, les documents communiqués ou les objets produits par une personne au cours de l'enquête menée par le commissaire en vertu de la présente loi sont privilégiés, comme s'il s'agissait d'une instance devant un tribunal. Éléments de preuve privilégiés
- (10) Sauf à l'occasion du procès d'une personne par suite d'un parjure au moment de son propre témoignage sous serment, nulle déclaration ou réponse faite par cette personne ou une autre personne au cours d'une enquête menée par le commissaire n'est admissible en preuve devant un tribunal, dans le cadre d'une enquête, ou au cours d'une instance. Aucun témoignage rendu en cours d'instance devant le commissaire ne peut servir de preuve contre qui que ce soit. Protection
- (11) Le commissaire informe la personne qui fait une déclaration ou donne une réponse au cours de l'enquête menée devant lui, de son droit en vertu de l'article 5 de la *Loi sur la preuve au Canada*, de s'opposer à répondre à une question. Idem
L.R.C. 1985,
chap. C-5
- (12) Nul n'est passible de poursuite relativement à une infraction à une loi autre que la présente loi, pour s'être conformé à une exigence du commissaire aux termes du présent article. Poursuite
- (13) Il doit être fourni à la personne qui a présenté une demande d'accès à un document, à la personne responsable de Observations

be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

Right to
counsel

(14) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.

Burden of
proof

42. If a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head.

Order

43.—(1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.

Idem

(2) If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.

Conditions

(3) The Commissioner's order may contain any conditions the Commissioner considers appropriate.

Notice of
order

(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 39 (3) written notice of order.

Delegation

44. The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 8 to be produced and examined.

PART IV

GENERAL

Costs

45.—(1) If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;

l'institution concernée, ainsi qu'à toute personne intéressée par les renseignements, l'occasion de présenter leurs observations au commissaire. Toutefois, nul n'a le droit d'être présent lors de la présentation faite par une autre personne, d'avoir accès à ces observations ou de les commenter.

(14) La personne qui a présenté la demande d'accès à un document, la personne responsable de l'institution concernée ainsi que toute personne intéressée par les renseignements peuvent être représentées par un avocat ou par un représentant. Droit à un avocat

42 Lorsque la personne responsable refuse l'accès à la totalité ou à une partie d'un document, c'est à elle que revient le fardeau de prouver que ce dernier constitue une exception précisée par la présente loi. Fardeau de la preuve

43 (1) Lorsque la preuve est close dans le cadre de l'enquête, le commissaire rend une ordonnance qui règle les questions soulevées par l'appel. Ordonnance

(2) Si le commissaire confirme la décision de la personne responsable de refuser la divulgation d'un document en totalité ou en partie, il ne doit pas enjoindre à celle-ci de divulguer le document ou la partie visée. Idem

(3) Le commissaire peut assortir l'ordonnance des conditions qu'il juge pertinentes. Conditions

(4) Le commissaire donne par écrit avis de l'ordonnance à l'appelant ainsi qu'aux personnes qui ont reçu l'avis d'appel en vertu du paragraphe 39 (3). Avis de l'ordonnance

44 Le commissaire ne doit pas déléguer son pouvoir d'exiger la présentation ou l'examen du document visé à l'article 8, sauf au commissaire adjoint. Délégation par le commissaire

PARTIE IV

DISPOSITIONS GÉNÉRALES

45 (1) En l'absence de dispositions d'une autre loi ou prises en vertu d'une autre loi concernant des frais ou droits imputables à la personne qui présente une demande d'accès à un document, la personne responsable exige le paiement : Frais

- a) de frais de recherche pour chaque heure de recherche manuelle requise au-delà de deux heures, afin de retrouver un document;

- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

Exception,
personal
information

(2) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

Estimate of
costs

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

Waiver of
payment

(4) A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

Review

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.

Disposition
of payments

(6) The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

Powers and
duties of
Commis-
sioner

46. The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed programs of institutions;
- (b) after hearing the head, order an institution to,

- b) des frais de préparation du document en vue de sa divulgation;
- c) des frais d'ordinateur et autres frais engagés pour le repérage, la récupération, le traitement et la duplication d'un document;
- d) de frais d'expédition.

(2) Malgré le paragraphe (1), la personne responsable n'exige aucun paiement de frais d'un particulier pour l'accès aux renseignements personnels qui le concernent.

Exception
quant aux
renseigne-
ments
personnels

(3) La personne responsable d'une institution, préalablement à la divulgation d'un document, fournit à l'auteur de la demande une estimation raisonnable de la somme supérieure à 25 \$, exigible, le cas échéant, en vertu de la présente loi.

Estimation
des frais

(4) Si, de l'avis de la personne responsable, cette mesure s'avère juste et équitable, la personne responsable supprime en totalité ou en partie la somme exigée en vertu de la présente loi, compte tenu :

Suppression
du paiement
des frais

- a) de l'écart entre le coût réel de traitement, de collecte et de duplication du document et la somme exigée aux termes du paragraphe (1);
- b) du fardeau financier éventuellement imposé au destinataire du document;
- c) des effets, favorables ou non, de la diffusion du document sur la santé et la sécurité publiques;
- d) de toute autre question prescrite par les règlements.

(5) La personne à qui sont imputés des frais en vertu du paragraphe (1), peut s'adresser au commissaire afin d'obtenir une révision, soit du montant de ces frais, soit de la décision de la personne responsable de ne pas les supprimer.

Révision

(6) La somme des frais prévus au présent article est versée et répartie de la manière prescrite par les règlements.

Répartition
des frais

46 Le commissaire peut :

Attributions
du commis-
saire

- a) présenter ses commentaires sur l'incidence des projets législatifs ou des programmes gouvernementaux proposés sur la protection de la vie privée;
- b) après avoir entendu la personne responsable, enjoindre à une institution :

- (i) cease a collection practice that contravenes this Act, and
- (ii) destroy collections of personal information that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act.

Regulations

47. The Lieutenant Governor in Council may make regulations,

- (a) respecting the procedures for access to original records under section 23;
- (b) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
- (c) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (d) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (e) prescribing time periods for the purposes of subsection 30 (1);
- (f) prescribing the payment and allocation of fees received under section 45;

- (i) d'une part, de renoncer à un certain mode de collecte de renseignements qui contrevient à la présente loi,
 - (ii) d'autre part, de disposer des fiches de renseignements personnels qui contreviennent à la présente loi;
- c) dans les cas appropriés, autoriser la collecte de renseignements personnels d'autres sources que du particulier lui-même;
 - d) entreprendre ou commander des recherches sur les questions qui ont une incidence sur la réalisation des objets de la présente loi;
 - e) instituer à l'intention du public des programmes d'information et fournir des renseignements relatifs à la présente loi ainsi qu'au rôle et aux activités du commissaire;
 - f) recevoir les observations du public relativement à l'application de la présente loi.

47 Le lieutenant-gouverneur en conseil peut, par Règlements
règlement :

- a) établir les formalités d'accès aux documents originaux en vertu de l'article 23;
- b) prescrire les circonstances dans lesquelles les documents qui peuvent être constitués à partir de documents lisibles par machine sont soustraits à la définition du terme «document» pour l'application de la présente loi;
- c) exiger des garanties d'ordre administratif, technique et matériel et en fixer les normes, afin d'assurer la protection et le caractère confidentiel de documents et de renseignements personnels dont une institution a le contrôle;
- d) fixer des normes d'exactitude et d'intégralité des renseignements personnels dont une institution a le contrôle;
- e) prescrire les délais pour l'application du paragraphe 30 (1);
- f) prescrire le versement et la répartition des droits perçus en vertu de l'article 45;

- (g) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 45;
- (h) designating any agency, board, commission, corporation or other body as an institution;
- (i) prescribing circumstances under which the notice under subsection 29 (2) is not required;
- (j) prescribing conditions relating to the security and confidentiality of records used for a research purpose;
- (k) prescribing forms and providing for their use;
- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

Offences

48.—(1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;
- (c) make a request under this Act for access to or correction of personal information under false pretences;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner.

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.

- g) prescrire les facteurs à considérer lors de la suppression en totalité ou en partie des frais exigés en vertu de l'article 45;
- h) désigner une entité, notamment un organisme, un conseil, une commission ou une personne morale en tant qu'institution;
- i) prescrire les circonstances dans lesquelles l'avis visé au paragraphe 29 (2) n'est pas requis;
- j) prescrire les conditions relatives à la sécurité et au caractère confidentiel des documents utilisés à des fins de recherche;
- k) prescrire des formules et prévoir les modalités de leur emploi;
- l) traiter de toute question que le lieutenant-gouverneur en conseil estime nécessaire pour réaliser efficacement les objets de la présente loi.

48 (1) Nul ne doit :

Infractions

- a) divulguer volontairement des renseignements personnels contrairement à la présente loi;
- b) maintenir volontairement une banque de renseignements personnels contrairement à la présente loi;
- c) appuyer d'une fausse déclaration une demande d'accès à des renseignements personnels ou de rectification de ces derniers présentée en vertu de la présente loi;
- d) entraver volontairement le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- e) faire volontairement une fausse déclaration dans le but d'induire en erreur ou de tenter d'induire en erreur le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- f) s'abstenir volontairement de se conformer à une décision du commissaire.

(2) Quiconque contrevient au paragraphe (1), est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$.

Peine

Consent of
Attorney
General

(3) A prosecution shall not be commenced under clause (1) (d), (e) or (f) without the consent of the Attorney General.

Delegation of
head's
powers

49.—(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

Protection
from civil
proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

Vicarious
liability of
institutions
preserved

(3) Subsection (2) does not relieve an institution from liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Oral requests

50.—(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

Pre-existing
access
preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this Act comes into force.

Information
otherwise
available

51.—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Powers of
courts and
tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Application
of Act

52.—(1) This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.

(3) Aucune poursuite en application de l'alinéa (1) d), e) ou f) ne doit être intentée sans le consentement du procureur général.

Consentement
du procureur
général

49 (1) Sous réserve des limitations, restrictions, conditions et exigences qu'elle énonce dans le mandat, la personne responsable peut, par écrit, déléguer tout ou partie de ses attributions à un ou plusieurs dirigeants de l'institution.

Délégation
des attribu-
tions de la
personne
responsable

(2) Sont irrecevables les actions ou autres instances intentées contre la personne responsable ou la personne qui agit pour son compte ou sous son autorité pour un préjudice subi par suite de la divulgation ou de la non-divulgation de bonne foi de la totalité ou d'une partie d'un document qui fait l'objet d'une demande en vertu de la présente loi ou de l'omission de donner l'avis requis en vertu de celle-ci, si des efforts raisonnables ont été faits pour donner l'avis.

Immunité

(3) Le paragraphe (2) ne dégage pas l'institution de la responsabilité qu'elle serait autrement tenue d'assumer à l'égard d'un délit civil commis par une personne visée au paragraphe (2).

Certaines
institutions
restent
responsables
du fait
d'autrui

50 (1) Si une personne responsable, aux termes de la présente loi, peut donner accès à des renseignements, la présente loi n'a pas pour effet d'empêcher cette personne d'y donner accès en réponse à une demande verbale ou en l'absence d'une demande quelconque.

Demandes
verbales

(2) La présente loi ne peut être invoquée pour interdire l'accès à des renseignements qui ne sont pas personnels et auxquels le public avait accès immédiatement avant l'entrée en vigueur de la présente loi, en vertu d'une loi, d'une coutume ou d'un usage établis.

Conservation
du droit
d'accès déjà
existant

51 (1) La présente loi ne fixe aucune limite aux renseignements par ailleurs mis à la disposition d'une partie à un litige en vertu de la loi.

Renseigne-
ments disponi-
bles par
ailleurs

(2) La présente loi n'a pas d'incidence sur le pouvoir que possède un tribunal judiciaire ou administratif de contraindre un témoin à témoigner ou d'ordonner la production d'un écrit.

Pouvoirs des
tribunaux
judiciaires et
administratifs

52 (1) La présente loi s'applique à tout document dont une institution a la garde ou le contrôle, que ce document ait été consigné avant ou après l'entrée en vigueur de la présente loi.

Champ d'ap-
plication de la
présente loi

Non-application of Act

(2) This Act does not apply to records placed in the archives of an institution by or on behalf of a person or organization other than the institution.

R.S.O. 1980, c. 308, s. 90 prevails

(3) Section 90 of the *Municipal Elections Act* prevails over any provisions of this Act that are inconsistent with that sector.

Exercise of rights of deceased, etc., persons

53. Any right or power conferred on an individual by this Act may be exercised,

- (a) if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (b) if a committee has been appointed for the individual or if the Public Trustee has become the individual's committee, by the committee; and
- (c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

Review of this Act

54. The Standing Committee on the Legislative Assembly shall, before the 1st day of January, 1994, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.

Commencement

55. This Act comes into force on the 1st day of January, 1991.

Short title

56. The short title of this Act is the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

(2) La présente loi ne s'applique pas aux documents déposés aux archives d'une institution par une personne ou par une organisation autre que l'institution, ou pour leur compte.

Cas de non-application de la loi

(3) L'article 90 de la *Loi sur les élections municipales* l'emporte sur les dispositions de la présente loi qui sont incompatibles avec cet article.

Primauté de l'art. 90 du chap. 308 des L.R.O. de 1980

53 Les droits et pouvoirs conférés à un particulier par la présente loi peuvent être exercés par :

Exercice des droits au nom de la personne décédée ou incapable

- a) son représentant successoral, dans le cas du particulier décédé, si l'exercice de ce droit ou du pouvoir est relié à l'administration de sa succession;
- b) le curateur aux biens ou à la personne de ce particulier ou par le Curateur public, si ce dernier assume cette fonction;
- c) la personne qui a la garde légitime du particulier, si celui-ci est âgé de moins de seize ans.

54 Le Comité permanent de l'Assemblée législative doit entreprendre un examen global de la présente loi avant le 1^{er} janvier 1994 et faire ses recommandations à l'Assemblée législative sur les modifications à apporter à la présente loi dans l'année qui suit le début de cet examen.

Examen de la présente loi

55 La présente loi entre en vigueur le 1^{er} janvier 1991.

Entrée en vigueur

56 Le titre abrégé de la présente loi est *Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée*.

Titre abrégé

Bill 49

An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards

The Hon. M. Elston
*Chairman of the Management
Board of Cabinet*

1st Reading July 20th, 1989
2nd Reading October 10th, 1989
3rd Reading
Royal Assent

*(Reprinted as amended by the
Administration of Justice Committee)*

Projet de loi 49

Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux

L'honorable M. Elston
*Président du Conseil de
gestion du gouvernement*



1^{re} lecture 20 juillet 1989
2^e lecture 10 octobre 1989
3^e lecture
sanction royale

*(Réimprimé tel qu'il est modifié par le
Comité de l'administration de la justice)*

EXPLANATORY NOTE

The *Freedom of Information and Protection of Privacy Act, 1987* provides that it will apply to municipalities and local boards, commissions and agencies on January 1, 1991. The Act provides for a three year delay in its application to municipalities because it was recognized that the Act would have to be amended to be effective in the municipal context. The purpose of the Bill is to apply the principles of the *Freedom of Information and Protection of Privacy Act, 1987* to municipalities and local boards, commissions and agencies.

NOTES EXPLICATIVES

La *Loi de 1987 sur l'accès à l'information et la protection de la vie privée* prévoit qu'elle s'appliquera le 1^{er} janvier 1991 aux municipalités, conseils locaux, commissions et organismes. La loi prévoit ce retard de trois ans dans son application aux municipalités parce qu'il a été reconnu que des modifications à la loi étaient nécessaires afin d'appliquer celle-ci au contexte municipal. Le présent projet de loi a pour but d'appliquer les principes de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée* aux municipalités, conseils locaux, commissions et organismes.

Bill 49**1989**

**An Act to provide for Freedom of Information and
Protection of Individual Privacy in
Municipalities and Local Boards**

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Projet de loi 49

1989

Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux

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SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 La présente loi a pour objets :

Objets

- a) de procurer un droit d'accès à l'information régie par une institution conformément aux principes suivants :

- (i) l'information doit être accessible au public,
(ii) les exceptions au droit d'accès doivent être limitées et précises,
(iii) les décisions relatives à la divulgation de l'information devraient faire l'objet d'un examen indépendant de l'institution qui a le contrôle de l'information;

- b) de protéger la vie privée des particuliers que concernent les renseignements personnels détenus par une institution et accorder à ces particuliers un droit d'accès à ces renseignements.

2 (1) Les définitions qui suivent s'appliquent à la présente loi. Définitions

«banque de renseignements personnels» Ensemble de renseignements personnels systématisés et susceptibles de récupération d'après le nom d'un particulier, d'après un

“institution” means,

- (a) a municipal corporation, including a metropolitan, district or regional municipality or the County of Oxford,
- (b) a school board, public utilities commission, hydro-electric commission, transit commission, suburban roads commission, public library board, board of health, police commission, conservation authority, district welfare administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act*,
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)

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“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b); (“exécution de la loi”)

“Minister” means the Chairman of the Management Board of Cabinet; (“ministre”)

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

numéro d'identification ou un signe individuel qui lui est attribué. («personal information bank»)

«commissaire à l'information et à la protection de la vie privée» et «commissaire» Le commissaire nommé en vertu du paragraphe 4 (1) de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. («Information and Privacy Commissioner», «Commissioner») 1987, chap. 25

«document» Document qui reproduit des renseignements sans égard à leur mode de transcription, que ce soit sous forme imprimée, sur film, au moyen de dispositifs électroniques ou autrement. S'entend en outre :

- a) de la correspondance, des notes, livres, plans, cartes, dessins, diagrammes, illustrations ou graphiques, photographies, films, microfilms, enregistrements sonores, bandes magnétoscopiques, documents lisibles par machine, de tout autre matériel documentaire sans égard à leur forme ou à leurs caractéristiques et de toute reproduction de ces éléments d'information;
- b) sous réserve des règlements, du document qui n'a pas pris forme mais qui peut être constitué au moyen de matériel et de logiciel informatiques ou d'autre matériel de stockage de données, de même que des connaissances techniques normalement utilisés par une institution, à partir de documents lisibles par machine que celle-ci a en sa possession. («record»)

«exécution de la loi» S'entend :

- a) du maintien de l'ordre;
- b) des enquêtes ou inspections qui aboutissent ou peuvent aboutir à des instances devant les tribunaux judiciaires ou administratifs, si ceux-ci peuvent imposer une peine ou une sanction à l'issue de ces instances;
- c) de la tenue des poursuites visées à l'alinéa b). («law enforcement»)

«institution» :

- a) une municipalité, notamment une municipalité

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

"personal information bank" means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual; ("banque de renseignements personnels")

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

régionale, de communauté urbaine ou de district, ou le comté d'Oxford;

- b) un conseil scolaire, une commission de services publics, une commission hydro-électrique, une commission de transport, une commission de voirie de banlieue, un conseil d'une bibliothèque publique, un conseil de santé, une commission de police, un office de protection de la nature, un conseil d'administration de district de l'aide sociale, une régie locale des services publics, un conseil de planification, une régie des routes locales, un village partiellement autonome ou un comité ou un conseil de gestion conjoints créés en vertu de la *Loi sur les municipalités*;

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chap. 302

- c) un organisme, un conseil, une commission, une personne morale ou une autre entité désignés comme institution dans les règlements. («institution»)

«ministre» Le président du Conseil de gestion du gouvernement. («Minister»)

«personne responsable» À l'égard d'une institution, s'entend du particulier ou de l'organisme qui est désigné en cette qualité en vertu de l'article 3. («head»)

«règlements» Les règlements pris en application de la présente loi. («regulations»)

«renseignements personnels» Renseignements consignés ayant trait à un particulier qui peut être identifié. S'entend notamment :

- a) des renseignements concernant la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial ou familial de celui-ci;
- b) des renseignements concernant l'éducation, les antécédents médicaux, psychiatriques, psychologiques, criminels ou professionnels de ce particulier ou des renseignements reliés à sa participation à une opération financière;
- c) d'un numéro d'identification, d'un symbole ou d'un autre signe individuel qui lui est attribué;
- d) de l'adresse, du numéro de téléphone, des empreintes digitales ou du groupe sanguin de ce particulier;

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

"regulations" means the regulations made under this Act.
("règlements")

Personal
information

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

Bodies
considered
part of
municipal
corporation

(3) Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of "institution" in subsection (1) or designated under clause (c) of the definition of "institution" in subsection (1) is deemed to be a part of the municipal corporation for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipal corporation.

Designation
of head

3.—(1) The members of the council of a municipal corporation may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipal corporation for the purposes of this Act.

Idem

(2) The members elected or appointed to the board, commission or other body that is an institution other than a municipal corporation may designate in writing from among themselves an individual or a committee of the body to act as head of the institution for the purposes of this Act.

If no
designation

(3) If no person is designated as head under this section, the head shall be,

- (a) the council, in the case of a municipal corporation;
and

- e) de ses opinions ou de ses points de vue personnels, sauf s'ils se rapportent à un autre particulier;
- f) de la correspondance ayant explicitement ou implicitement un caractère personnel et confidentiel, adressée par le particulier à une institution, de même que des réponses à cette correspondance originale susceptibles d'en révéler le contenu;
- g) des opinions et des points de vue d'une autre personne au sujet de ce particulier;
- h) du nom du particulier, s'il figure parmi d'autres renseignements personnels qui le concernent, ou si sa divulgation risque de révéler d'autres renseignements personnels au sujet du particulier. («personal information»)

(2) Les renseignements personnels excluent ceux qui concernent un particulier décédé depuis plus de trente ans.

Renseignements
personnels

(3) Les organismes, conseils, commissions, personnes morales ou autres entités qui ne sont pas mentionnés à l'alinéa b) de la définition d'«institution» au paragraphe (1) ou désignés en vertu de l'alinéa c) de cette définition, sont réputés faire partie d'une municipalité pour l'application de la présente loi si tous leurs membres, ou leurs dirigeants sont nommés ou choisis par le conseil de la municipalité, ou nommés ou choisis en vertu des pouvoirs de ce conseil.

Entités réputées faire partie d'une municipalité

3 (1) Les membres du conseil de la municipalité peuvent, par règlement municipal, désigner une personne membre du conseil ou un comité de celui-ci à titre de personne responsable de la municipalité pour l'application de la présente loi.

Désignation de la
personne
responsable

(2) Les membres élus ou nommés à un conseil, à une commission ou à un autre organisme qui est une institution, à l'exception d'une municipalité, peuvent, par écrit, désigner une personne membre de l'organisme ou un comité de celui-ci à titre de personne responsable de l'institution pour l'application de la présente loi.

Idem

(3) Si personne n'est désigné à titre de personne responsable en vertu du présent article, la personne responsable est, selon le cas :

Aucune
désignation

- a) le conseil municipal, dans le cas d'une municipalité;

- (b) the members elected or appointed to the board, commission or other body in the case of an institution other than a municipal corporation.

PART I

FREEDOM OF INFORMATION

ACCESS TO RECORDS

Right of
access

4.—(1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

Severability
of record

(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Obligation to
disclose

5.—(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

Contents of
notice

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part should not be disclosed, those representations will be considered by the head.

- b) les membres élus ou nommés au conseil, à la commission ou à l'autre organisme, dans le cas d'une institution qui n'est pas une municipalité.

PARTIE I

ACCÈS À L'INFORMATION

ACCÈS AUX DOCUMENTS

4 (1) Chacun a un droit d'accès à un document ou une partie de celui-ci dont une institution a le contrôle ou la garde, sauf si le document ou la partie fait l'objet d'une exception aux termes des articles 6 à 15. Droit d'accès

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document qui contient des renseignements faisant l'objet d'une exception en vertu des articles 6 à 15, divulgue la partie du document qui peut raisonnablement en être extraite sans divulguer ces renseignements. Extrait du document

5 (1) Malgré toute autre disposition de la présente loi, la personne responsable qui a des motifs raisonnables et probables de croire qu'il y va de l'intérêt public, divulgue au public ou aux personnes intéressées dans les meilleurs délais, compte tenu des circonstances, le document révélateur d'un grave danger pour la santé ou la sécurité du public ou pour l'environnement. Obligation de divulguer un document

(2) La personne responsable fait aviser dans la mesure du possible toutes les personnes concernées par les renseignements que contient le document visé au paragraphe (1) avant d'en divulguer la teneur. Avis

(3) L'avis comporte : Teneur de l'avis

- a) une déclaration portant que la personne responsable a l'intention de communiquer la totalité ou une partie d'un document et que cette divulgation peut avoir une incidence sur les intérêts de la personne;
- b) une description de la teneur du document ou de la partie du document qui concerne cette personne;
- c) une déclaration portant que la personne responsable tiendra compte des observations que lui présentera sans délai cette personne, si cette dernière expose les motifs pour lesquels le document ne devrait pas être divulgué, même en partie.

Representa-
tions

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

EXEMPTIONS

Draft
by-laws, etc.

6.—(1) A head may refuse to disclose a record,

- (a) that contains a draft of a by-law or a draft of a private bill; or
- (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

- (a) in the case of a record under clause (1) (a), the draft has been considered in a meeting open to the public;
- (b) in the case of a record under clause (1) (b), the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than twenty years old.

Advice or
recommen-
dations

7.—(1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator;

(4) La personne qui reçoit l'avis visé au paragraphe (2) peut présenter sans délai à la personne responsable ses observations exposant les motifs pour lesquels ce document ne devrait pas être divulgué, même en partie. Observations

EXCEPTIONS

6 (1) Une personne responsable peut refuser de divulguer un document : Projets de règlements municipaux

- a) qui contient un projet de règlement municipal ou un avant-projet de loi privée;
- b) qui révèle l'essentiel des délibérations d'un conseil, d'une commission ou d'une autre entité ou d'un comité de ceux-ci lors d'une réunion si une loi autorise la tenue de cette réunion en l'absence du public.

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser de divulguer un document en vertu de ce paragraphe si, selon le cas : Exception

- a) le projet de règlement municipal ou l'avant-projet de loi privée a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) a);
- b) l'objet des délibérations a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) b);
- c) le document date de plus de vingt ans.

7 (1) La personne responsable peut refuser de divulguer un document qui aurait pour effet de révéler les conseils ou les recommandations émanant d'un dirigeant ou d'un employé d'une institution ou d'un expert-conseil dont les services ont été retenus par cette institution. Conseils ou recommandations

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document qui comporte l'un des éléments suivants : Exceptions

- a) de la documentation portant sur des faits;
- b) un sondage statistique;
- c) le rapport d'un estimateur;

- (d) an environmental impact statement or similar record;
- (e) a report or study on the performance or efficiency of an institution;
- (f) a feasibility study or other technical study, including a cost estimate, relating to a policy or project of an institution;
- (g) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (h) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program;
- (i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;
- (j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (k) the reasons for a final decision, order or ruling of an officer or an employee of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution.

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if the record is more than twenty years old.

Law
enforcement

8.—(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;

- d) un rapport sur d'éventuelles répercussions sur l'environnement ou un document semblable;
- e) le rapport ou le résultat d'une étude relative au rendement ou à l'efficacité d'une institution;
- f) une étude de faisabilité ou autre étude technique, y compris une estimation des coûts, reliée à une politique ou à un projet d'une institution;
- g) le rapport qui comporte les résultats d'une recherche effectuée sur le terrain préalablement à la formulation d'une politique proposée;
- h) la proposition ou le plan définitifs en vue de la modification d'un programme existant ou de l'établissement d'un nouveau programme d'une institution, y compris son estimation budgétaire;
- i) le rapport d'un comité ou d'une entité semblable d'une institution chargés de dresser un rapport sur une question précise;
- j) le rapport d'une entité liée à une institution et constituée dans le but de mener des enquêtes suivies de rapports ou de recommandations destinés à cette institution;
- k) les motifs à l'appui de la décision, de l'arrêté, de l'ordonnance, de l'ordre ou de la directive définitifs du fonctionnaire ou d'un employé d'une institution et rendus à la fin ou au cours de l'exercice d'un pouvoir discrétionnaire conféré par un texte législatif ou un projet mis en application par cette institution, ou en vertu de ceux-ci.

(3) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document si le document date de plus de vingt ans. Idem

8 (1) La personne responsable peut refuser de divulguer un document si la divulgation devait avoir pour effet probable : Exécution de la loi

- a) de faire obstacle à une question qui concerne l'exécution de la loi;

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

- b) de faire obstacle à l'enquête menée préalablement à une poursuite judiciaire ou qui y aboutira vraisemblablement;
- c) de révéler des techniques et procédés d'enquête qui sont présentement ou qui seront vraisemblablement en usage dans l'exécution de la loi;
- d) de divulguer l'identité d'une source d'information confidentielle reliée à l'exécution de la loi ou de divulguer des renseignements obtenus uniquement de cette source;
- e) de constituer une menace à la vie ou à la sécurité physique d'un agent d'exécution de la loi ou d'une autre personne;
- f) de priver une personne de son droit à un procès équitable ou à un jugement impartial;
- g) de faire obstacle à l'obtention de renseignements secrets reliés à l'exécution de la loi à l'égard de certaines organisations ou de certaines personnes ou de les révéler;
- h) de révéler un document qui a été confisqué à une personne par un agent de la paix, conformément à une loi ou à un règlement;
- i) de compromettre la sécurité d'un immeuble ou d'un véhicule servant au transport de certains articles ou au système ou mode de protection de ces articles, dont la protection est normalement exigée;
- j) de faciliter l'évasion d'une personne légalement détenue;
- k) de compromettre la sécurité d'un centre de détention légale;
- l) de faciliter la perpétration d'un acte illégal ou d'entraver la répression du crime.

(2) La personne responsable peut refuser de divulguer un document : ^{Idem}

- a) qui constitue un rapport dressé au cours de l'exécution de la loi, de l'inspection ou de l'enquête

- (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to
confirm or
deny
existence of
record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

Exception

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Relations
with
governments

9.—(1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or

menées par un organisme chargé d'assurer et de réglementer l'observation de la loi;

- b) relié à l'exécution de la loi et dont la divulgation constituerait une infraction à une loi du Parlement;
- c) relié à l'exécution de la loi et dont la divulgation donnerait raisonnablement lieu de craindre que son auteur, la personne qui est citée ou dont les mots ont été paraphrasés dans le document, ne soit l'objet de poursuites civiles;
- d) où figurent les renseignements reliés aux antécédents, à la surveillance ou à la mise en liberté d'une personne confiée au contrôle ou à la surveillance d'une administration correctionnelle.

(3) La personne responsable peut refuser de confirmer ou de nier l'existence du document visé au paragraphe (1) ou (2).

Refus de confirmer ou de nier l'existence d'un document

(4) Malgré l'alinéa (2) a), la personne responsable divulgue le document qui constitue un rapport dressé dans le cadre d'inspections de routine effectuées par un organisme autorisé à assurer et à réglementer l'observation d'une loi particulière de l'Ontario.

Exception

(5) Les paragraphes (1) et (2) ne s'appliquent pas au document qui a trait au degré de succès atteint dans le cadre d'un programme d'exécution de la loi, y compris les analyses statistiques, sauf si la divulgation de ce document est susceptible de nuire, de faire obstacle ou de porter atteinte à la poursuite des objectifs visés à ces paragraphes.

Idem

9 (1) La personne responsable refuse de divulguer un document si la divulgation devait avoir pour effet probable de révéler des renseignements confidentiels confiés à l'institution :

Rapports avec des gouvernements

- a) par le gouvernement du Canada;
- b) par le gouvernement de l'Ontario ou d'une province ou d'un territoire du Canada;
- c) par le gouvernement d'un pays ou d'un État étrangers;
- d) par un organisme d'un gouvernement visé à l'alinéa a), b) ou c);

- (e) an international organization of states or a body of such an organization.

Idem

(2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

Third party
information

10.—(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- ➡ (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. ▲

Consent to
disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

Economic
and other
interests

11. A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could

- e) par une organisation internationale d'États ou par l'une de ses entités.

(2) La personne responsable peut divulguer un document auquel s'applique le paragraphe (1) si le gouvernement, l'organisme ou l'organisation qui a confié les renseignements à l'institution y consent. Idem

10 (1) La personne responsable refuse de divulguer un document qui révèle un secret industriel ou des renseignements d'ordre scientifique, technique, commercial, financier ou qui ont trait aux relations de travail, dont le caractère confidentiel est implicite ou explicite et dont la divulgation aurait pour effet probable : Renseignements de tiers

- a) de nuire gravement à la situation concurrentielle ou d'entraver gravement les négociations contractuelles ou autres d'une personne, d'un groupe de personnes ou d'une organisation;
- b) d'interrompre la communication de renseignements semblables à l'institution, alors qu'il serait dans l'intérêt public que cette communication se poursuive;
- c) de causer des pertes ou des profits indus à une personne, un groupe de personnes, un comité, une institution ou un organisme financiers;
- ➡ d) de divulguer des renseignements fournis à un conciliateur, un médiateur, un agent des relations de travail ou une autre personne nommée pour régler un conflit de relations de travail, ou de divulguer le rapport de l'une de ces personnes. ▲

(2) La personne responsable peut divulguer le document visé au paragraphe (1) si la personne concernée par les renseignements y consent. Consentement à la divulgation

11 La personne responsable peut refuser de divulguer un document qui comporte : Intérêts économiques et autres

- a) des secrets industriels ou des renseignements d'ordre financier, commercial, scientifique ou technique qui sont la propriété d'une institution et qui ont une valeur pécuniaire actuelle ou éventuelle;
- b) des renseignements résultant d'une recherche effectuée par l'employé d'une institution et dont la divul-

reasonably be expected to deprive the employee of priority of publication;

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

1981, c. 70

Solicitor-client
privilege

12. A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Danger to
safety or
health

13. A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

gation aurait pour effet probable de retirer à l'employé la primauté de la publication;

- c) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts économiques d'une institution ou à sa situation concurrentielle;
- d) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts financiers d'une institution;
- e) des positions, projets, lignes de conduite, normes ou instructions devant être observés par une institution ou pour son compte dans le cadre d'une négociation actuelle ou éventuelle;
- f) des projets relatifs à la direction du personnel ou à la gestion d'une institution qui n'ont pas encore été mis en application ou rendus publics;
- g) des renseignements, y compris les projets, les politiques ou les entreprises proposés d'une institution dont la divulgation aboutirait vraisemblablement à la divulgation prématurée d'un programme à l'état de projet ou occasionnerait des pertes ou profits indus à une personne;
- h) des questions devant servir à un examen ou d'un test à des fins scolaires;
- i) des observations faites par une municipalité qui est partie à une question ou par une autre entité en vertu de la *Loi de 1981 sur les négociations de limites municipales*, si la question à laquelle ces observations sont reliées n'a pas été résolue aux termes de cette loi.

1981, chap. 70

12 La personne responsable peut refuser de divulguer un document protégé par le secret professionnel de l'avocat. Il en est de même d'un document élaboré par l'avocat-conseil employé ou engagé par une institution, ou pour le compte de celui-ci, qui l'utilise soit dans la communication de conseils juridiques, soit à l'occasion ou en prévision d'une instance.

Secret professionnel de l'avocat

13 La personne responsable peut refuser de divulguer le document dont la divulgation aurait pour effet probable de compromettre gravement la santé ou la sécurité d'un particulier.

Menace à la santé ou à la sécurité

Personal
privacy

14.—(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re
invasion of
privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

14 (1) La personne responsable ne divulgue des renseignements personnels qu'au particulier concerné par ceux-ci, sauf :

Vie privée

- a) à la demande écrite ou du consentement préalables du particulier concerné si ce dernier a lui-même le droit d'y avoir accès;
- b) lors d'une situation d'urgence où il existe un risque immédiat pour la santé ou la sécurité d'un particulier, si un avis de la divulgation est ensuite envoyé par courrier au particulier concerné par les renseignements à sa dernière adresse connue;
- c) les renseignements personnels recueillis et conservés dans le but précis de constituer un document accessible au grand public;
- d) en vertu d'une loi de l'Ontario ou du Canada qui autorise expressément la divulgation;
- e) à des fins de recherche si :
 - (i) la divulgation est conforme aux conditions ou à l'utilisation envisagées au moment où ces renseignements ont été divulgués, recueillis ou obtenus,
 - (ii) les fins de recherche à l'origine de la divulgation ne peuvent être raisonnablement atteintes que si les renseignements sont divulgués sous une forme qui permette l'identification individuelle,
 - (iii) la personne devant recevoir le document a accepté de se conformer aux conditions relatives à la sécurité et au caractère confidentiel qui sont prescrites par les règlements;
- f) la divulgation ne constitue pas une atteinte injustifiée à la vie privée.

(2) Aux fins de déterminer si la divulgation de renseignements personnels constitue une atteinte injustifiée à la vie privée, la personne responsable tient compte des circonstances pertinentes et examine notamment si :

Critères :
atteinte injustifiée à la vie privée

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Presumed
invasion of
privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

- a) la divulgation est souhaitable parce qu'elle permet au public de surveiller de près les activités de l'institution;
- b) l'accès aux renseignements personnels peut promouvoir une amélioration de la santé et de la sécurité publiques;
- c) l'accès aux renseignements personnels rendra l'achat de biens et de services susceptible d'un choix plus judicieux;
- d) les renseignements personnels ont une incidence sur la juste détermination des droits qui concernent l'auteur de la demande;
- e) le particulier visé par les renseignements personnels risque d'être injustement lésé dans ses intérêts pécuniaires ou autres;
- f) les renseignements personnels sont d'une nature très délicate;
- g) l'exactitude et la fiabilité des renseignements personnels sont douteuses;
- h) le particulier visé par les renseignements personnels les a communiqués à l'institution à titre confidentiel;
- i) la divulgation est susceptible de porter injustement atteinte à la réputation d'une personne dont il est fait mention dans le document.

(3) Est présumée constituer une atteinte injustifiée à la vie privée, la divulgation de renseignements personnels :

Atteinte présumée à la vie privée

- a) relatifs aux antécédents, au diagnostic, à la maladie, au traitement ou à l'évaluation d'ordre médical, psychiatrique ou psychologique;
- b) qui ont été recueillis et peuvent être identifiés comme partie du dossier d'une enquête reliée à une contravention possible à la loi, sauf dans la mesure où la divulgation est nécessaire aux fins d'instituer des poursuites judiciaires ou de continuer l'enquête;

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

Limitation

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

Refusal to confirm or deny existence of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

Information soon to be published

15. A head may refuse to disclose a record if,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record

- c) relatifs à l'admissibilité aux prestations d'aide sociale ou de service social ou à l'établissement du niveau des prestations;
- d) qui ont trait aux antécédents professionnels ou académiques;
- e) qui ont été relevés dans une déclaration d'impôt ou recueillis à des fins de perception fiscale;
- f) qui précisent la situation financière, le revenu, l'actif, le passif, la situation nette, les soldes bancaires, les antécédents ou les activités d'ordre financier ou la solvabilité d'un particulier;
- g) qui comportent des recommandations ou des évaluations personnelles, des renseignements ayant trait à la moralité ou à des évaluations de personnel;
- h) qui indiquent la race, l'origine ethnique, l'orientation sexuelle ou les croyances ou allégeances religieuses ou politiques du particulier.

(4) Malgré le paragraphe (3), ne constitue pas une atteinte injustifiée à la vie privée, la divulgation portant sur les renseignements suivants :

Restrictions

- a) le classement, les barèmes de traitement et d'avantages sociaux ou les responsabilités professionnelles d'un particulier qui est ou a été dirigeant ou employé d'une institution;
- b) les modalités d'ordre financier ou autres d'un contrat de louage de services personnels intervenu entre un particulier et une institution.

(5) La personne responsable peut refuser de confirmer ou de nier l'existence d'un document dont la divulgation constituerait une atteinte injustifiée à la vie privée.

Refus de confirmer ou de nier l'existence d'un document

15 La personne responsable peut refuser de divulguer un document si, selon le cas :

Publication prochaine des renseignements

- a) le document ou les renseignements qu'il comporte ont déjà été publiés ou sont accessibles au public;
- b) la personne responsable a des motifs raisonnables de croire que le document ou les renseignements

will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Exemptions
not to apply

16. An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

ACCESS PROCEDURE

Request

17.—(1) A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

Sufficiency of
detail

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Definition
1987, c. 25

18.—(1) In this section, “institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act, 1987*. (“institution”)

Request to
be forwarded

(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

Transfer of
request

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

seront publiés par une institution dans les quatre-vingt-dix jours de la demande ou au cours de la période de temps additionnelle nécessaire à leur impression ou à leur traduction à cette fin.

16 Les exceptions à la divulgation visées aux articles 7, 9, 10, 11, 13 et 14 ne s'appliquent pas si la nécessité manifeste de divulguer le document dans l'intérêt public l'emporte sans conteste sur les fins visées par les exceptions.

Non-application des exceptions

PROCÉDURE D'ACCÈS

17 (1) L'auteur de la demande d'accès à un document s'adresse par écrit à l'institution qui, à son avis, a la garde ou le contrôle du document. Il fournit les détails suffisants qui permettront à un employé expérimenté de l'institution à la suite d'une démarche normale, d'identifier le document.

Demande

(2) Dans le cas d'insuffisance de la description du document requis, l'institution en avise l'auteur de la demande et lui fournit l'aide nécessaire afin de formuler celle-ci à nouveau et de la rendre conforme au paragraphe (1).

Détails suffisants

18 (1) Dans le présent article, «institution» s'entend en outre d'une institution au sens de l'article 2 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. («institution»)

Définition
1987, chap. 25

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document dont l'institution n'a ni la garde ni le contrôle, fait les recherches raisonnables afin de déterminer si une autre institution en a la garde ou le contrôle. Si la personne responsable détermine que tel est le cas, la personne responsable, dans les quinze jours de la réception de la demande :

Acheminement de la demande

- a) d'une part, renvoie celle-ci à l'institution concernée;
- b) d'autre part, avise par écrit l'auteur de la demande du renvoi à une autre institution.

(3) La personne responsable de l'institution qui reçoit une demande d'accès à un document, lequel, à son avis, intéresse davantage une autre institution, peut transférer la demande, et, si nécessaire, le document lui-même à cette autre institution dans les quinze jours de la réception de la demande. La personne responsable qui effectue ce transfert en informe alors par écrit l'auteur de la demande.

Transfert de la demande

Greater
interest

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

When
transferred
request
deemed
made

(5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

Notice by
head

19. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20 and 21, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

Extension of
time

20.—(1) A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

(4) Pour l'application du paragraphe (3), un document intéresse davantage une institution autre que celle qui reçoit la demande d'accès si, selon le cas :

Ressort d'une
autre
institution

- a) le document a d'abord été constitué par l'autre institution ou pour son compte;
- b) l'autre institution a reçu la première ce document ou une copie de celui-ci, si le document n'a pas d'abord été constitué par une institution ou pour son compte.

(5) La demande renvoyée ou transférée en vertu du paragraphe (2) ou (3) est réputée présentée à l'autre institution le jour de sa réception par l'institution originale.

Date de la
demande

19 Sous réserve des articles 20 et 21, lorsqu'une personne présente une demande d'accès à un document, la personne responsable de l'institution qui reçoit la demande ou, si la demande fait l'objet d'un renvoi ou d'un transfert aux termes de l'article 18, la personne responsable de l'institution destinataire du renvoi ou du transfert, prend, dans les trente jours de sa réception, les mesures suivantes :

Avis donné
par la
personne
responsable

- a) elle avise par écrit l'auteur de la demande qu'elle lui donnera ou non accès à la totalité ou à une partie du document;
- b) si l'accès doit être accordé, elle donne accès à la totalité ou à une partie du document à l'auteur de la demande et prend les mesures nécessaires à sa production, si besoin est.

20 (1) La personne responsable peut proroger le délai imparti à l'article 19 pour un temps raisonnable compte tenu des circonstances si, selon le cas :

Prorogation
du délai

- a) la demande comporte la production ou la consultation d'un grand nombre de documents et que l'observation du délai imparti aurait pour effet d'entraver abusivement les activités normales de l'institution;
- b) il est nécessaire d'avoir des consultations avec une personne à l'extérieur de l'institution afin de répondre à la demande et que ces consultations ne peuvent pas être normalement terminées avant l'expiration du délai imparti.

Notice of
extension

(2) A head who extends the time limit under subsection (1) shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension.

Notice to
affected
person

21.—(1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14 (1) (f).

Contents of
notice

(2) The notice shall contain,

- (a) a statement that the head intends to disclose a record or part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Time for
notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, if there has been an extension of a time limit under subsection 20 (1), within that extended time limit.

(2) La personne responsable qui proroge le délai imparti aux termes du paragraphe (1) en informe par écrit l'auteur de la demande et précise notamment :

Avis de
prorogation

- a) la durée du délai prorogé;
- b) les motifs à l'appui;
- c) le fait que l'auteur de la demande peut s'adresser au commissaire afin d'obtenir une révision de la prorogation.

21 (1) Avant de permettre l'accès à un document, la personne responsable, donne à la personne concernée un avis écrit conformément au paragraphe (2), lorsque la personne responsable a des raisons de croire :

Avis à la
personne
concernée

- a) que le document comporte certains renseignements visés au paragraphe 10 (1) susceptibles de porter atteinte aux intérêts d'une personne autre que l'auteur de la demande;
- b) qu'il s'agit de renseignements personnels dont la divulgation pourrait constituer une atteinte injustifiée à la vie privée pour l'application de l'alinéa 14 (1) f).

(2) L'avis comporte :

Teneur de
l'avis

- a) une mention que la personne responsable a l'intention de divulguer la totalité ou une partie d'un document susceptible de porter atteinte aux intérêts de la personne concernée;
- b) un exposé de la teneur de la totalité ou de la partie du document qui a trait à cette personne;
- c) une mention que la personne concernée peut, dans les vingt jours de l'envoi de l'avis, faire des observations à la personne responsable exposant les raisons pour lesquelles le document ne devrait pas être divulgué en totalité ou en partie.

(3) L'avis visé au paragraphe (1) est donné dans les trente jours de la réception de la demande d'accès, ou au cours du délai prorogé aux termes du paragraphe 20 (1).

Délai pour
donner l'avis

Notice of
delay

(4) A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

- (a) that the disclosure of the record or part may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record.

Representa-
tion re
disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Representa-
tion in
writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

Decision re
disclosure

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within thirty days after the notice under subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given.

Notice of
head's
decision to
disclose

(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and

(4) La personne responsable qui donne un avis en vertu du paragraphe (1) donne en outre à l'auteur de la demande un avis écrit du retard qui énonce les faits suivants :

Avis du retard

- a) la divulgation de la totalité ou d'une partie de ce document peut porter atteinte aux intérêts d'un tiers;
- b) l'occasion est fournie à ce tiers de faire des observations relativement à la divulgation du document;
- c) la personne responsable rendra dans les trente jours sa décision de divulguer ou non le document.

(5) La personne concernée par les renseignements peut, dans les vingt jours de l'envoi de l'avis donné en vertu du paragraphe (1), faire des observations à la personne responsable exposant les raisons pour lesquelles le document ou la partie de celui-ci ne devrait pas être divulgué.

Observations
relatives à la
divulgarion

(6) Les observations faites aux termes du paragraphe (5) le sont par écrit sauf si la personne responsable permet qu'elles soient faites de vive voix.

Observations
par écrit

(7) Dans les trente jours de l'envoi de l'avis visé au paragraphe (1), la personne responsable rend sa décision de permettre ou non la divulgation du document ou de la partie de celui-ci et informe par écrit de sa décision la personne concernée par les renseignements ainsi que l'auteur de la demande. Toutefois, la personne responsable ne prend pas ces mesures avant la première des éventualités suivantes à se réaliser :

Décision de
permettre la
divulgarion

- a) la réception de la réponse à l'avis donné à la personne concernée par les renseignements;
- b) l'expiration d'un délai de vingt et un jours après l'envoi de l'avis.

(8) La personne responsable qui décide de divulguer un document ou une partie de celui-ci en vertu du paragraphe (7) mentionne dans l'avis :

Avis de la
décision de la
personne
responsable

- a) d'une part, que la personne concernée par les renseignements peut interjeter appel de la décision devant le commissaire dans les trente jours de l'envoi de l'avis;

- (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within thirty days after the notice is given.

Access to be
given unless
affected
person
appeals

(9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Contents of
notice of
refusal

22.—(1) Notice of refusal to give access to a record or part under section 19 shall set out,

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
- (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(2) A head who refuses to confirm or deny the existence of a record as provided in subsection 8 (3) (law enforcement) or subsection 14 (5) (unjustified invasion of personal privacy) shall state in the notice given under section 19,

- (a) that the head refuses to confirm or deny the existence of the record;
- (b) the provision of this Act on which the refusal is based;

- b) d'autre part, que l'auteur de la demande aura accès à la totalité ou à une partie du document à moins qu'un appel de la décision ne soit interjeté dans les trente jours de l'envoi de l'avis.

(9) À la suite de sa décision à cet effet prise en vertu du paragraphe (7), la personne responsable donne à l'auteur de la demande, dans les trente jours de l'envoi de l'avis en vertu du paragraphe (7), accès au document ou à une partie de celui-ci, à moins que le commissaire n'ait reçu une demande de révision de la décision de la part de la personne concernée par les renseignements.

Accès permis
sauf appel

22 (1) L'avis du refus de donner accès à la totalité ou à une partie du document en vertu de l'article 19, énonce les faits suivants :

Teneur de
l'avis de
refus

- a) si le document n'existe pas :
 - (i) qu'il n'existe pas de tel document,
 - (ii) que l'auteur de la demande peut interjeter appel devant le commissaire de la question de l'existence du document;
- b) si le document existe :
 - (i) la disposition précise de la présente loi à l'appui du refus,
 - (ii) le motif pour lequel la disposition s'applique au document,
 - (iii) le nom et le titre de l'auteur de la décision,
 - (iv) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire.

(2) La personne responsable qui refuse de confirmer ou de nier l'existence d'un document aux termes du paragraphe 8 (3) (exécution de la loi) ou du paragraphe 14 (5) (atteinte injustifiée à la vie privée), mentionne dans l'avis donné en vertu de l'article 19 les points suivants :

Idem

- a) le fait que la personne responsable refuse de confirmer ou de nier l'existence du document;
- b) la disposition de la présente loi sur laquelle se fonde le refus;

- (c) the name and office of the person responsible for making the decision; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(3) A head who refuses to disclose a record or part under subsection 21 (7) shall state in the notice given under subsection 21 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Deemed refusal

(4) A head who fails to give the notice required under section 19 or subsection 21 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

Copy of record

23.—(1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

Access to original record

(2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

Copy of part

(3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

- c) le nom et le titre de l'auteur de la décision;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(3) La personne responsable qui refuse de divulguer un document en totalité ou en partie en vertu du paragraphe 21 (7), mentionne dans l'avis donné en vertu de ce paragraphe les points suivants :

Idem

- a) la disposition précise de la présente loi à l'appui du refus;
- b) le motif pour lequel la disposition visée à l'alinéa a) s'applique au document;
- c) le nom et le titre de l'auteur de la décision de refuser l'accès;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(4) La personne responsable qui, relativement à un document, fait défaut de donner l'avis qu'exige l'article 19 ou le paragraphe 21 (7), est réputée avoir donné avis de son refus de permettre l'accès au document le dernier jour du délai imparti à cette fin.

Avis réputé
donné du
refus

23 (1) Sous réserve du paragraphe (2), il est délivré à la personne à qui il y est donné accès en vertu de la présente loi, copie de la totalité ou d'une partie du document visé, sauf si la nature ou la longueur de ce document en rendent la reproduction trop difficile. Dans ce cas, il est donné à cette personne l'occasion de consulter la totalité ou la partie du document.

Copie du
document

(2) La personne responsable, dans la mesure du possible, donne à la personne qui en fait la demande, l'occasion de consulter un document en totalité ou en partie.

Accès à
l'original du
document

(3) Si une personne consulte un document en totalité ou en partie et souhaite en faire copier des extraits, il lui est donné copie de ces extraits sauf si la nature ou la longueur de ces extraits en rendent la reproduction trop difficile.

Extraits

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication
of
information
re institutions

24.—(1) The Minister shall cause to be published a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made; and
- (b) the title of the head of the institution.

Idem

(2) The Minister shall cause the compilation to be published within one year of the coming into force of this Act and at least once every three years thereafter.

Information
available for
inspection

25.—(1) A head shall cause to be made available for inspection and copying by the public information containing,

- (a) a description of the organization and responsibilities of the institution;
- (b) a list of the general classes or types of records in the custody or control of the institution;
- (c) the title, business telephone and business address of the head; and
- (d) the address to which a request under this Act should be made.

Idem

(2) The head shall ensure that the information made available is amended as required to ensure its accuracy.

Annual
report of
head

26.—(1) A head shall make an annual report, in accordance with subsection (2), to the Commissioner.

Contents of
report

(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;

PUBLICATION ET ACCESSIBILITÉ DE L'INFORMATION

24 (1) Le ministre fait publier un répertoire des institutions, qui indique à l'égard de chacune :

Publication de l'information concernant les institutions

- a) l'endroit où doit être présentée la demande d'accès à un document;
- b) le titre de la personne responsable de l'institution.

(2) Le ministre fait publier le répertoire dans l'année qui suit l'entrée en vigueur de la présente loi et au moins une fois tous les trois ans par la suite.

Idem

25 (1) Une personne responsable rend accessible au public un dossier de renseignements afin que le public puisse l'examiner et en prendre des copies. Le dossier comporte :

Renseignements rendus accessibles au public

- a) un exposé de la structure et des responsabilités de l'institution;
- b) un répertoire des catégories générales ou des genres de documents dont l'institution a la garde ou le contrôle;
- c) les titre, adresse et numéro de téléphone d'affaires de la personne responsable;
- d) l'adresse à laquelle une demande aux termes de la présente loi doit être présentée.

(2) La personne responsable veille à ce que les renseignements rendus accessibles au public soient modifiés en cas de besoin afin d'en assurer l'exactitude.

Idem

26 (1) La personne responsable présente un rapport annuel au commissaire conformément au paragraphe (2).

Rapport annuel de la personne responsable

(2) Le rapport préparé en vertu du paragraphe (1) fournit les précisions suivantes :

Teneur du rapport

- a) le nombre de demandes d'accès aux documents présentées à l'institution en vertu de la présente loi;
- b) le nombre de refus de divulguer un document de la part de la personne responsable, les dispositions de la présente loi à l'appui de ce refus, ainsi que la fréquence de renvoi à chacune des dispositions invoquées;

- (c) the number of uses or purposes for which personal information is disclosed if the use or purpose is not included in the statements of uses and purposes set forth under clauses 34 (1) (d) and (e);
- (d) the amount of fees collected by the institution under section 45; and
- (e) any other information indicating an effort by the institution to put into practice the purposes of this Act.

PART II

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application
of Part

27. This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

Definition

28.—(1) In this section and in section 29, “personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act. (“renseignements personnels”)

Collection of
personal
information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of
collection

29.—(1) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*, 1987;
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);

- c) la quantité de fins et d'usages non visés par les relevés énoncés aux alinéas 34 (1) d) et e) pour lesquels des renseignements personnels sont divulgués;
- d) le montant des droits perçus par l'institution aux termes de l'article 45;
- e) les renseignements relatifs aux mesures prises par l'institution afin de réaliser les objets de la présente loi.

PARTIE II

PROTECTION DE LA VIE PRIVÉE

COLLECTE ET CONSERVATION DES RENSEIGNEMENTS PERSONNELS

27 La présente partie ne s'applique pas aux renseignements personnels qui sont conservés dans le but de constituer un document accessible au grand public.

Champ d'application de la partie

28 (1) Dans le présent article et dans l'article 29, «renseignements personnels» s'entend en outre des renseignements qui ne sont pas consignés et qui constituent, par ailleurs, des renseignements personnels au sens de la présente loi. («personal information»)

Définition

(2) Nul ne doit recueillir des renseignements personnels pour le compte d'une institution à moins d'y être autorisé expressément par une loi, ou à moins que ces renseignements servent à l'exécution de la loi ou soient nécessaires au bon exercice d'une activité autorisée par la loi.

Collecte des renseignements personnels

29 (1) L'institution ne doit recueillir les renseignements personnels que directement du seul particulier concerné par ces renseignements, sauf si :

Mode de collecte des renseignements

- a) ce particulier a autorisé un autre mode de collecte;
- b) leur divulgation à l'institution concernée est autorisée aux termes de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*;
- c) leur mode de collecte a reçu l'autorisation du commissaire en vertu de l'alinéa 46 c);

1987, chap. 25

R.S.O. 1980,
c. 89

- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.

Notice to
individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Exception

(3) Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8 (1) or (2) (law enforcement);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required.

- d) les renseignements sont consignés dans le rapport d'un organisme de renseignements au sens de la *Loi sur les renseignements concernant le consommateur*; L.R.O. 1980,
chap. 89
- e) les renseignements sont recueillis aux fins de déterminer les candidats possibles à une distinction ou à un prix en reconnaissance de réalisations exceptionnelles ou de services éminents;
- f) les renseignements sont recueillis aux fins d'une instance poursuivie ou envisagée devant soit un tribunal, soit un tribunal administratif à caractère judiciaire ou quasi-judiciaire;
- g) les renseignements sont recueillis aux fins de l'exécution de la loi;
- h) un autre mode de collecte des renseignements est autorisé par une loi ou en vertu de celle-ci.

(2) Si les renseignements personnels sont recueillis pour le compte d'une institution, la personne responsable informe au moyen d'un avis le particulier concerné par les renseignements des faits suivants : Avis
particulier

- a) l'autorité légale invoquée à cette fin;
- b) les fins principales auxquelles doivent servir ces renseignements personnels;
- c) les titre, adresse et numéro de téléphone d'affaires d'un fonctionnaire ou d'un employé de l'institution qui peut renseigner le particulier au sujet de cette collecte.

(3) Le paragraphe (2) ne s'applique pas si, selon le cas : Exception

- a) la personne responsable peut refuser de divulguer les renseignements personnels en vertu du paragraphe 8 (1) ou (2) (exécution de la loi);
- b) le ministre accorde une dispense relativement à l'avis;
- c) les règlements prévoient que l'avis n'est pas requis.

Retention of
personal
information

30.—(1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Standard of
accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes.

Disposal of
personal
information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations.

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of
personal
information

31. An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*.

1987, c. 25

Where
disclosure
permitted

32. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is

30 (1) L'institution qui s'est servie des renseignements personnels les conserve durant le délai prescrit par les règlements afin de fournir l'occasion au particulier concerné par ces renseignements d'y obtenir lui-même accès.

Conservation
des ren-
seignements
personnels

(2) La personne responsable d'une institution veille à ce que seuls soient utilisés les renseignements personnels consignés dans ses documents qui sont exacts et à jour.

Norme
d'exactitude

(3) Le paragraphe (2) ne s'applique pas aux renseignements personnels recueillis aux fins de l'exécution de la loi.

Exception

(4) La personne responsable dispose des renseignements personnels dont l'institution a le contrôle conformément aux règlements.

Disposition
des ren-
seignements
personnels

UTILISATION ET DIVULGATION DES RENSEIGNEMENTS PERSONNELS

31 Une institution ne doit pas utiliser les renseignements personnels dont elle a la garde ou le contrôle, sauf :

Utilisation des
renseigne-
ments
personnels

- a) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur utilisation;
- b) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- c) à des fins qui justifient leur divulgation à l'institution en vertu de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*.

1987, chap. 25

32 Une institution ne doit pas divulguer les renseignements personnels dont elle a la garde ou le contrôle, sauf :

Divulgation
permise

- a) conformément à la partie I;
- b) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur divulgation;
- c) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- d) si la divulgation est faite au dirigeant ou à l'employé d'une institution à qui ce document est nécessaire dans l'exercice de ses fonctions et que cette divul-

necessary and proper in the discharge of the institution's functions;

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

Consistent
purpose

33. The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure.

gation est essentielle et appropriée à l'acquittement des fonctions de l'institution;

- e) afin de se conformer aux dispositions d'une loi de la Législature ou du Parlement, à un accord ou à un arrangement intervenus en vertu d'une telle loi ou à un traité;
- f) si la divulgation est faite par une institution chargée de l'exécution de la loi :
 - (i) soit à l'organisme semblable d'un pays étranger en vertu d'un arrangement, d'un accord écrit, d'un traité ou d'un pouvoir conféré par une loi,
 - (ii) soit à un autre organisme du Canada chargé de l'exécution de la loi;
- g) si la divulgation est faite à une institution quelconque ou à un organisme chargé de l'exécution de la loi au Canada aux fins de faciliter une enquête menée en vue d'une action en justice ou qui aboutira vraisemblablement à une action en justice;
- h) lors d'une situation d'urgence ayant une incidence sur la santé ou la sécurité d'un particulier, si un avis de la divulgation est envoyé sans tarder au particulier concerné par les renseignements à sa dernière adresse connue;
- i) dans une situation relative à un événement de famille afin de faciliter la communication avec un proche parent ou un ami d'un particulier blessé, malade ou décédé;
- j) au ministre;
- k) au commissaire à l'information et à la protection de la vie privée;
- l) au gouvernement du Canada ou au gouvernement de l'Ontario, afin de faciliter la vérification des programmes cofinancés.

33 Seule constitue une fin compatible au sens des alinéas 31 b) et 32 c), la fin invoquée à l'appui de l'utilisation ou de la divulgation de renseignements personnels à laquelle le particulier concerné par les renseignements pourrait raisonnable-

Fin
compatible

PERSONAL INFORMATION BANKS

Personal
information
bank index

34.—(1) A head shall make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;
- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

Ensure
accuracy

(2) The head shall ensure that the index is amended as required to ensure its accuracy.

Inconsistent
use or
disclosure

35.—(1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 34 (1) (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 34 (1) (e).

Idem

(2) A record of use or disclosure under subsection (1) forms part of the personal information to which it is attached or linked.

ment s'attendre lorsque ceux-ci ont été obtenus du particulier directement.

BANQUES DE RENSEIGNEMENTS PERSONNELS

34 (1) La personne responsable rend accessible pour fin d'examen par le public un répertoire des banques de données de renseignements personnels dont l'institution a la garde ou le contrôle et qui indique à l'égard de chaque banque :

Répertoire
des banques
de ren-
seignements
personnels

- a) son nom et le lieu où elle est située;
- b) l'autorité légale invoquée à l'appui de sa constitution;
- c) le genre de renseignements personnels qui y sont conservés;
- d) les usages réguliers faits de ces renseignements personnels;
- e) les personnes à qui les renseignements personnels sont divulgués de façon régulière;
- f) les catégories de particuliers au sujet desquels des renseignements personnels sont conservés;
- g) les politiques et pratiques applicables à la conservation et à la suppression des renseignements personnels.

(2) La personne responsable veille à ce que le répertoire soit modifié en cas de besoin afin d'en assurer l'exactitude.

Assurance de
l'exactitude

35 (1) La personne responsable annexe ou incorpore aux renseignements personnels dans une banque de renseignements personnels :

Utilisation ou
divulgaration
incompatibles

- a) un document décrivant l'usage fait de ces renseignements personnels à une fin autre que celle décrite à l'alinéa 34 (1) d);
- b) un document décrivant la divulgation faite de ces renseignements personnels à une personne autre que celle décrite à l'alinéa 34 (1) e).

(2) Un document visé au paragraphe (1) qui décrit l'usage ou la divulgation fait partie des renseignements personnels auxquels il est annexé ou incorporé.

Idem

RIGHT OF INDIVIDUALS TO WHOM PERSONAL INFORMATION
RELATES TO ACCESS AND CORRECTION

Right of
access to
personal
information

36.—(1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Right of
correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Request

37.—(1) An individual seeking access to personal information about the individual shall make a request for access in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Access
procedures

(2) Subsections 4 (2) and 17 (2) and sections 18, 19, 20, 21, 22 and 23 apply with necessary modifications to a request made under subsection (1).

Compre-
hensible
form

(3) If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general conditions under which the personal information is stored and used.

DROIT DU PARTICULIER CONCERNÉ PAR LES
RENSEIGNEMENTS
PERSONNELS À L'ACCÈS ET À LA RECTIFICATION

36 (1) Tout particulier a un droit d'accès :

Droit d'accès
aux ren-
seignements
personnels

- a) aux renseignements personnels qui le concernent qui sont mis en mémoire dans une banque de renseignements personnels dont une institution a la garde ou le contrôle;
- b) aux autres renseignements personnels qui le concernent dont une institution a la garde ou le contrôle et que le particulier indique avec suffisamment de précision pour permettre à l'institution de les récupérer sans trop de difficulté.

(2) Tout particulier à qui est accordé l'accès aux renseignements personnels aux termes du paragraphe (1) a le droit :

Droit à la
rectification

- a) de demander la rectification des renseignements personnels si, à son avis, ceux-ci sont erronés ou incomplets;
- b) d'exiger que soit annexée à ces renseignements une déclaration de désaccord qui fasse mention de la rectification demandée mais non effectuée;
- c) d'exiger que la personne ou l'entité à qui les renseignements ont été divulgués au cours de l'année qui précède la demande de rectification ou la déclaration de désaccord soient avisées de ceux-ci.

37 (1) Le particulier qui sollicite l'accès aux renseignements personnels qui le concernent en fait la demande par écrit à l'institution qui, à son avis, a le contrôle ou la garde de ces renseignements. Il identifie la banque de renseignements personnels ou identifie d'une autre façon l'endroit où sont consignés les renseignements.

Demande

(2) Les paragraphes 4 (2) et 17 (2) ainsi que les articles 18, 19, 20, 21, 22 et 23 s'appliquent avec les adaptations nécessaires à la demande présentée aux termes du paragraphe (1).

Procédure
d'accès

(3) La personne responsable veille à ce que les renseignements personnels soient communiqués, le cas échéant, au particulier sous une forme intelligible et d'une façon qui permet de connaître les conditions générales de leur stockage et de leur utilisation.

Forme
intelligible

Exemptions

38. A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;
- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (d) that is medical information if the disclosure could reasonably be expected to prejudice the mental or physical health of the individual; or
- (e) that is a research or statistical record.

PART III

APPEAL

Right to
appeal

39.—(1) A person may appeal any decision of a head under this Act to the Commissioner if,

- (a) the person has made a request for access to a record under subsection 17 (1);
- (b) the person has made a request for access to personal information under subsection 37 (1);
- (c) the person has made a request for correction of personal information under subsection 36 (2); or
- (d) the person is given notice of a request under subsection 21 (1).

38 La personne responsable peut refuser de divulguer au particulier concerné les renseignements personnels : Exceptions

- a) dont la divulgation est régie par l'article 6, 7, 8, 9, 10, 11, 12, 13 ou 15;
- b) si la divulgation constitue une atteinte injustifiée à la vie privée d'un autre particulier;
- c) qui sont constitués de documents d'appréciation ou d'avis divers recueillis dans le seul but d'établir l'aptitude, l'admissibilité ou les qualités requises relativement à un emploi ou à l'attribution de contrats et d'autres avantages par une institution si la divulgation avait pour effet de révéler la source de renseignements d'une institution dans une situation où il est normal de présumer que l'identité de cette source devait rester secrète;
- d) d'ordre médical dont la divulgation aurait pour effet probable de porter atteinte à la santé mentale ou physique du particulier;
- e) qui constituent un dossier de recherche ou un dossier statistique.

PARTIE III

APPELS

39 (1) Une personne peut interjeter appel devant le commissaire de toute décision d'une personne responsable si, selon le cas : Droit d'appel

- a) la personne a présenté une demande d'accès à un document aux termes du paragraphe 17 (1);
- b) la personne a présenté une demande d'accès à des renseignements personnels aux termes du paragraphe 37 (1);
- c) la personne a présenté une demande de rectification des renseignements personnels aux termes du paragraphe 36 (2);
- d) la personne a reçu l'avis d'une demande aux termes du paragraphe 21 (1).

Time for
application

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

Notice of
application
for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned and any other affected person of the notice of appeal.

Mediator to
try to effect
settlement

40. The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal.

Inquiry

41.—(1) If a settlement is not effected under section 40, the Commissioner shall conduct an inquiry to review the head's decision.

R.S.O. 1980,
c. 484
not to apply

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1).

Inquiry in
private

(3) The inquiry may be conducted in private.

Powers of
Commissioner

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Record not
retained by
Commissioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4).

Examination
on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of
entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination
under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry and, for that purpose, the Commissioner may administer an oath.

Evidence
privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

(2) L'appel aux termes du paragraphe (1) est interjeté par le dépôt auprès du commissaire d'un avis d'appel écrit, dans les trente jours de l'avis de la décision qui en fait l'objet.

Délai impart

(3) Dès la réception de l'avis d'appel, le commissaire en informe la personne responsable de l'institution visée et toute personne intéressée.

Avis d'appel

40 Le commissaire peut autoriser un médiateur à enquêter sur les circonstances qui entourent l'appel et à tenter de parvenir au règlement de la question qui en fait l'objet.

Tentative de
règlement par
le médiateur

41 (1) Si un règlement n'est pas intervenu en vertu de l'article 40, le commissaire mène une enquête afin de réexaminer la décision de la personne responsable.

Enquête

(2) La *Loi sur l'exercice des compétences légales* ne s'applique pas à l'enquête menée en vertu du paragraphe (1).

Non-
application du
chap. 484 des
L.R.O. de
1980

(3) L'enquête peut se dérouler à huis clos.

Enquête à
huis clos

(4) Malgré les parties I et II de la présente loi, et toute autre loi ou privilège, le commissaire peut, dans le cadre d'une enquête, exiger que lui soit communiqué un document dont une institution a la garde ou le contrôle et en faire l'examen. Il peut de même aux fins de l'enquête pénétrer dans les locaux d'une institution et en faire l'inspection.

Pouvoirs du
commissaire

(5) Le commissaire ne doit pas conserver les renseignements consignés dans un document communiqué en vertu du paragraphe (4).

Le commis-
saire ne con-
serve pas le
document

(6) Malgré le paragraphe (4), la personne responsable peut exiger que le commissaire consulte sur place l'original du document.

Consultation
sur place

(7) Avant de pénétrer dans des locaux en vertu du paragraphe (4), le commissaire informe la personne responsable de l'institution qui les occupe de l'objet de sa visite.

Avis de con-
sultation

(8) Le commissaire peut assigner à comparaître et interroger sous serment la personne qui, à son avis, pourrait avoir des renseignements relatifs à l'enquête. Il peut faire prêter serment à cette fin.

Interrogatoire
sous serment

(9) Les paroles prononcées, les renseignements fournis, les documents communiqués ou les objets produits par une personne au cours de l'enquête menée par le commissaire en

Éléments de
preuve privi-
légiés

- Protection (10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.
- Idem (11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.
- R.S.C. 1985,
c. C-5
- Prosecution (12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.
- Representations (13) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.
- Right to counsel (14) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.
- Burden of proof **42.** If a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head.
- Order **43.—**(1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.
- Idem (2) If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.

vertu de la présente loi sont privilégiés, comme s'il s'agissait d'une instance devant un tribunal.

(10) Sauf à l'occasion du procès d'une personne par suite d'un parjure au moment de son propre témoignage sous serment, nulle déclaration ou réponse faite par cette personne ou une autre personne au cours d'une enquête menée par le commissaire n'est admissible en preuve devant un tribunal, dans le cadre d'une enquête, ou au cours d'une instance. Aucun témoignage rendu en cours d'instance devant le commissaire ne peut servir de preuve contre qui que ce soit. Protection

(11) Le commissaire informe la personne qui fait une déclaration ou donne une réponse au cours de l'enquête menée devant lui, de son droit en vertu de l'article 5 de la *Loi sur la preuve au Canada*, de s'opposer à répondre à une question. Idem
L.R.C. 1985, chap. C-5

(12) Nul n'est passible de poursuite relativement à une infraction à une loi autre que la présente loi, pour s'être conformé à une exigence du commissaire aux termes du présent article. Poursuite

(13) Il doit être fourni à la personne qui a présenté une demande d'accès à un document, à la personne responsable de l'institution concernée, ainsi qu'à toute personne intéressée par les renseignements, l'occasion de présenter leurs observations au commissaire. Toutefois, nul n'a le droit d'être présent lors de la présentation faite par une autre personne, d'avoir accès à ces observations ou de les commenter. Observations

(14) La personne qui a présenté la demande d'accès à un document, la personne responsable de l'institution concernée ainsi que toute personne intéressée par les renseignements peuvent être représentées par un avocat ou par un représentant. Droit à un avocat

42 Lorsque la personne responsable refuse l'accès à la totalité ou à une partie d'un document, c'est à elle que revient le fardeau de prouver que ce dernier constitue une exception précisée par la présente loi. Fardeau de la preuve

43 (1) Lorsque la preuve est close dans le cadre de l'enquête, le commissaire rend une ordonnance qui règle les questions soulevées par l'appel. Ordonnance

(2) Si le commissaire confirme la décision de la personne responsable de refuser la divulgation d'un document en totalité ou en partie, il ne doit pas enjoindre à celle-ci de divulguer le document ou la partie visée. Idem

- Conditions (3) The Commissioner's order may contain any conditions the Commissioner considers appropriate.
- Notice of order (4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 39 (3) written notice of order.
- Delegation **44.** The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 8 to be produced and examined.

PART IV

GENERAL

- Costs **45.—**(1) If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,
- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
 - (b) the costs of preparing the record for disclosure;
 - (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
 - (d) shipping costs.
- Exception, personal information (2) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.
- Estimate of costs (3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.
- Waiver of payment (4) A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,
- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);

(3) Le commissaire peut assortir l'ordonnance des conditions qu'il juge pertinentes. Conditions

(4) Le commissaire donne par écrit avis de l'ordonnance à l'appelant ainsi qu'aux personnes qui ont reçu l'avis d'appel en vertu du paragraphe 39 (3). Avis de l'ordonnance

44 Le commissaire ne doit pas déléguer son pouvoir d'exiger la présentation ou l'examen du document visé à l'article 8, sauf au commissaire adjoint. Délégation par le commissaire

PARTIE IV

DISPOSITIONS GÉNÉRALES

45 (1) En l'absence de dispositions d'une autre loi ou prises en vertu d'une autre loi concernant des frais ou droits imputables à la personne qui présente une demande d'accès à un document, la personne responsable exige le paiement : Frais

- a) de frais de recherche pour chaque heure de recherche manuelle requise au-delà de deux heures, afin de retrouver un document;
- b) des frais de préparation du document en vue de sa divulgation;
- c) des frais d'ordinateur et autres frais engagés pour le repérage, la récupération, le traitement et la duplication d'un document;
- d) de frais d'expédition.

(2) Malgré le paragraphe (1), la personne responsable n'exige aucun paiement de frais d'un particulier pour l'accès aux renseignements personnels qui le concernent. Exception quant aux renseignements personnels

(3) La personne responsable d'une institution, préalablement à la divulgation d'un document, fournit à l'auteur de la demande une estimation raisonnable de la somme supérieure à 25 \$, exigible, le cas échéant, en vertu de la présente loi. Estimation des frais

(4) Si, de l'avis de la personne responsable, cette mesure s'avère juste et équitable, la personne responsable supprime en totalité ou en partie la somme exigée en vertu de la présente loi, compte tenu : Suppression du paiement des frais

- a) de l'écart entre le coût réel de traitement, de col-

- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

Review

- (5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.

Disposition of payments

- (6) The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

Powers and duties of Commissioner**46.** The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed programs of institutions;
- (b) after hearing the head, order an institution to,
 - (i) cease a collection practice that contravenes this Act, and
 - (ii) destroy collections of personal information that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act.

lecte et de duplication du document et la somme exigée aux termes du paragraphe (1);

- b) du fardeau financier éventuellement imposé au destinataire du document;
- c) des effets, favorables ou non, de la diffusion du document sur la santé et la sécurité publiques;
- d) de toute autre question prescrite par les règlements.

(5) La personne à qui sont imputés des frais en vertu du paragraphe (1), peut s'adresser au commissaire afin d'obtenir une révision, soit du montant de ces frais, soit de la décision de la personne responsable de ne pas les supprimer.

Révision

(6) La somme des frais prévus au présent article est versée et répartie de la manière prescrite par les règlements.

Répartition
des frais

46 Le commissaire peut :

Attributions
du commis-
saire

- a) présenter ses commentaires sur l'incidence des projets législatifs ou des programmes gouvernementaux proposés sur la protection de la vie privée;
- b) après avoir entendu la personne responsable, enjoindre à une institution :
 - (i) d'une part, de renoncer à un certain mode de collecte de renseignements qui contrevient à la présente loi,
 - (ii) d'autre part, de disposer des fiches de renseignements personnels qui contreviennent à la présente loi;
- c) dans les cas appropriés, autoriser la collecte de renseignements personnels d'autres sources que du particulier lui-même;
- d) entreprendre ou commander des recherches sur les questions qui ont une incidence sur la réalisation des objets de la présente loi;
- e) instituer à l'intention du public des programmes d'information et fournir des renseignements relatifs à la présente loi ainsi qu'au rôle et aux activités du commissaire;

Regulations

47. The Lieutenant Governor in Council may make regulations,

- (a) respecting the procedures for access to original records under section 23;
- (b) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
- (c) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (d) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (e) prescribing time periods for the purposes of subsection 30 (1);
- (f) prescribing the payment and allocation of fees received under section 45;
- (g) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 45;
- (h) designating any agency, board, commission, corporation or other body as an institution;
- (i) prescribing circumstances under which the notice under subsection 29 (2) is not required;
- (j) prescribing conditions relating to the security and confidentiality of records used for a research purpose;
- (k) prescribing forms and providing for their use;

- f) recevoir les observations du public relativement à l'application de la présente loi.

47 Le lieutenant-gouverneur en conseil peut, par ^{Règlements} règlement :

- a) établir les formalités d'accès aux documents originaux en vertu de l'article 23;
- b) prescrire les circonstances dans lesquelles les documents qui peuvent être constitués à partir de documents lisibles par machine sont soustraits à la définition du terme «document» pour l'application de la présente loi;
- c) exiger des garanties d'ordre administratif, technique et matériel et en fixer les normes, afin d'assurer la protection et le caractère confidentiel de documents et de renseignements personnels dont une institution a le contrôle;
- d) fixer des normes d'exactitude et d'intégralité des renseignements personnels dont une institution a le contrôle;
- e) prescrire les délais pour l'application du paragraphe 30 (1);
- f) prescrire le versement et la répartition des droits perçus en vertu de l'article 45;
- g) prescrire les facteurs à considérer lors de la suppression en totalité ou en partie des frais exigés en vertu de l'article 45;
- h) désigner une entité, notamment un organisme, un conseil, une commission ou une personne morale en tant qu'institution;
- i) prescrire les circonstances dans lesquelles l'avis visé au paragraphe 29 (2) n'est pas requis;
- j) prescrire les conditions relatives à la sécurité et au caractère confidentiel des documents utilisés à des fins de recherche;
- k) prescrire des formules et prévoir les modalités de leur emploi;

- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

Offences

48.—(1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;
- (c) make a request under this Act for access to or correction of personal information under false pretences;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner.

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.

Consent of
Attorney
General

(3) A prosecution shall not be commenced under clause (1) (d), (e) or (f) without the consent of the Attorney General.

Delegation of
head's
powers

49.—(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

Protection
from civil
proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

- 1) traiter de toute question que le lieutenant-gouverneur en conseil estime nécessaire pour réaliser efficacement les objets de la présente loi.

48 (1) Nul ne doit :

Infractions

- a) divulguer volontairement des renseignements personnels contrairement à la présente loi;
- b) maintenir volontairement une banque de renseignements personnels contrairement à la présente loi;
- c) appuyer d'une fausse déclaration une demande d'accès à des renseignements personnels ou de rectification de ces derniers présentée en vertu de la présente loi;
- d) entraver volontairement le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- e) faire volontairement une fausse déclaration dans le but d'induire en erreur ou de tenter d'induire en erreur le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- f) s'abstenir volontairement de se conformer à une décision du commissaire.

(2) Quiconque contrevient au paragraphe (1), est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$.

Peine

(3) Aucune poursuite en application de l'alinéa (1) d), e) ou f) ne doit être intentée sans le consentement du procureur général.

Consentement
du procureur
général

49 (1) Sous réserve des limitations, restrictions, conditions et exigences qu'elle énonce dans le mandat, la personne responsable peut, par écrit, déléguer tout ou partie de ses attributions à un ou plusieurs dirigeants de l'institution.

Délégation
des attribu-
tions de la
personne
responsable

(2) Sont irrecevables les actions ou autres instances intentées contre la personne responsable ou la personne qui agit pour son compte ou sous son autorité pour un préjudice subi par suite de la divulgation ou de la non-divulgation de bonne foi de la totalité ou d'une partie d'un document qui fait l'objet d'une demande en vertu de la présente loi ou de l'omission de donner l'avis requis en vertu de celle-ci, si des efforts raisonnables ont été faits pour donner l'avis.

Immunité

Vicarious
liability of
institutions
preserved

(3) Subsection (2) does not relieve an institution from liability in respect of a tort committed by a head or a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Oral requests

50.—(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

Pre-existing
access
preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this Act comes into force.

Information
otherwise
available

51.—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Powers of
courts and
tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Application
of Act

52.—(1) This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.

Non-
application of
Act

(2) This Act does not apply to records placed in the archives of an institution by or on behalf of a person or organization other than the institution.



Other Acts

53.—(1) This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

Idem

(2) The following confidentiality provisions prevail over this Act:

R.S.O. 1980,
c. 308

1. Section 90 of the *Municipal Elections Act*.

R.S.O. 1980,
c. 31

2. Subsection 57 (1) of the *Assessment Act*.



(3) Le paragraphe (2) ne dégage pas l'institution de la responsabilité qu'elle serait autrement tenue d'assumer à l'égard d'un délit civil commis par une personne responsable ou une personne visée au paragraphe (2).

Certaines institutions restent responsables du fait d'autrui

50 (1) Si une personne responsable, aux termes de la présente loi, peut donner accès à des renseignements, la présente loi n'a pas pour effet d'empêcher cette personne d'y donner accès en réponse à une demande verbale ou en l'absence d'une demande quelconque.

Demandes verbales

(2) La présente loi ne peut être invoquée pour interdire l'accès à des renseignements qui ne sont pas personnels et auxquels le public avait accès immédiatement avant l'entrée en vigueur de la présente loi, en vertu d'une loi, d'une coutume ou d'un usage établis.

Conservation du droit d'accès déjà existant

51 (1) La présente loi ne fixe aucune limite aux renseignements par ailleurs mis à la disposition d'une partie à un litige en vertu de la loi.

Renseignements disponibles par ailleurs

(2) La présente loi n'a pas d'incidence sur le pouvoir que possède un tribunal judiciaire ou administratif de contraindre un témoin à témoigner ou d'ordonner la production d'un écrit.

Pouvoirs des tribunaux judiciaires et administratifs

52 (1) La présente loi s'applique à tout document dont une institution a la garde ou le contrôle, que ce document ait été consigné avant ou après l'entrée en vigueur de la présente loi.

Champ d'application de la présente loi

(2) La présente loi ne s'applique pas aux documents déposés aux archives d'une institution par une personne ou par une organisation autre que l'institution, ou pour leur compte.

Cas de non-application de la loi

53 (1) La présente loi l'emporte sur une disposition ayant trait au caractère confidentiel qui figure dans toute autre loi, sauf disposition contraire dans cette autre loi ou dans la présente loi.

Autres lois

(2) Les dispositions suivantes qui ont trait au caractère confidentiel l'emportent sur la présente loi :

Idem

1. L'article 90 de la *Loi sur les élections municipales*.

L.R.O. 1980, chap. 308

2. Le paragraphe 57 (1) de la *Loi sur l'évaluation foncière*.

L.R.O. 1980, chap. 31

Exercise of
rights of
deceased,
etc., persons

54. Any right or power conferred on an individual by this Act may be exercised,

- (a) if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (b) if a committee has been appointed for the individual or if the Public Trustee has become the individual's committee, by the committee; and
- (c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

Review of
this Act

55. The Standing Committee on the Legislative Assembly shall, before the 1st day of January, 1994, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.

Commence-
ment

56. This Act comes into force on the 1st day of January, 1991.

Short title

57. The short title of this Act is the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

54 Les droits et pouvoirs conférés à un particulier par la présente loi peuvent être exercés par :

Exercice des droits au nom de la personne décédée ou incapable

- a) son représentant successoral, dans le cas du particulier décédé, si l'exercice de ce droit ou du pouvoir est relié à l'administration de sa succession;
- b) le curateur aux biens ou à la personne de ce particulier ou par le Curateur public, si ce dernier assume cette fonction;
- c) la personne qui a la garde légitime du particulier, si celui-ci est âgé de moins de seize ans.

55 Le Comité permanent de l'Assemblée législative doit entreprendre un examen global de la présente loi avant le 1^{er} janvier 1994 et faire ses recommandations à l'Assemblée législative sur les modifications à apporter à la présente loi dans l'année qui suit le début de cet examen.

Examen de la présente loi

56 La présente loi entre en vigueur le 1^{er} janvier 1991.

Entrée en vigueur

57 Le titre abrégé de la présente loi est *Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée*.

Titre abrégé

Bill 49

(Chapter 63
Statutes of Ontario, 1989)

An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Boards

The Hon. M. Elston
*Chairman of the Management
Board of Cabinet*

<i>1st Reading</i>	July 20th, 1989
<i>2nd Reading</i>	October 10th, 1989
<i>3rd Reading</i>	December 14th, 1989
<i>Royal Assent</i>	December 14th, 1989

Projet de loi 49

(Chapitre 63
Lois de l'Ontario de 1989)

Loi prévoyant l'accès à l'information et la protection de la vie privée dans les municipalités et les conseils locaux

L'honorable M. Elston
*Président du Conseil de
gestion du gouvernement*



<i>1^{re} lecture</i>	20 juillet 1989
<i>2^e lecture</i>	10 octobre 1989
<i>3^e lecture</i>	14 décembre 1989
<i>sanction royale</i>	14 décembre 1989

Bill 49**1989**

**An Act to provide for Freedom of Information and
Protection of Individual Privacy in
Municipalities and Local Boards**

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Projet de loi 49**1989**

**Loi prévoyant l'accès à l'information et la
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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Purposes

1. The purposes of this Act are,
 - (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
 - (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Definitions

- 2.—(1) In this Act,

“head”, in respect of an institution, means the individual or body determined to be head under section 3; (“personne responsable”)

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (1) of the *Freedom of Information and Protection of Privacy Act, 1987*; (“commissaire à l’information et à la protection de la vie privée”, “commissaire”)

Article

DROIT DU PARTICULIER
CONCERNÉ PAR LES
RENSEIGNEMENTS
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- 53. Autres lois
- 54. Exercice des droits au nom de la personne décédée
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- 56. Entrée en vigueur
- 57. Titre abrégé

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 La présente loi a pour objets :

Objets

- a) de procurer un droit d'accès à l'information régie par une institution conformément aux principes suivants :
 - (i) l'information doit être accessible au public,
 - (ii) les exceptions au droit d'accès doivent être limitées et précises,
 - (iii) les décisions relatives à la divulgation de l'information devraient faire l'objet d'un examen indépendant de l'institution qui a le contrôle de l'information;
- b) de protéger la vie privée des particuliers que concernent les renseignements personnels détenus par une institution et accorder à ces particuliers un droit d'accès à ces renseignements.

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

Définitions

«banque de renseignements personnels» Ensemble de renseignements personnels systématisés et susceptibles de récupération d'après le nom d'un particulier, d'après un

“institution” means,

- (a) a municipal corporation, including a metropolitan, district or regional municipality or the County of Oxford,
- (b) a school board, public utilities commission, hydro-electric commission, transit commission, suburban roads commission, public library board, board of health, police commission, conservation authority, district welfare administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act*,
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)

R.S.O. 1980,
c. 302

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b); (“exécution de la loi”)

“Minister” means the Chairman of the Management Board of Cabinet; (“ministre”)

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

numéro d'identification ou un signe individuel qui lui est attribué. («personal information bank»)

«commissaire à l'information et à la protection de la vie privée» et «commissaire» Le commissaire nommé en vertu du paragraphe 4 (1) de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. («Information and Privacy Commissioner», «Commissioner») 1987, chap. 25

«document» Document qui reproduit des renseignements sans égard à leur mode de transcription, que ce soit sous forme imprimée, sur film, au moyen de dispositifs électroniques ou autrement. S'entend en outre :

- a) de la correspondance, des notes, livres, plans, cartes, dessins, diagrammes, illustrations ou graphiques, photographies, films, microfilms, enregistrements sonores, bandes magnétoscopiques, documents lisibles par machine, de tout autre matériel documentaire sans égard à leur forme ou à leurs caractéristiques et de toute reproduction de ces éléments d'information;
- b) sous réserve des règlements, du document qui n'a pas pris forme mais qui peut être constitué au moyen de matériel et de logiciel informatiques ou d'autre matériel de stockage de données, de même que des connaissances techniques normalement utilisés par une institution, à partir de documents lisibles par machine que celle-ci a en sa possession. («record»)

«exécution de la loi» S'entend :

- a) du maintien de l'ordre;
- b) des enquêtes ou inspections qui aboutissent ou peuvent aboutir à des instances devant les tribunaux judiciaires ou administratifs, si ceux-ci peuvent imposer une peine ou une sanction à l'issue de ces instances;
- c) de la tenue des poursuites visées à l'alinéa b). («law enforcement»)

«institution» :

- a) une municipalité, notamment une municipalité

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")

"personal information bank" means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual; ("banque de renseignements personnels")

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

régionale, de communauté urbaine ou de district, ou le comté d'Oxford;

- b) un conseil scolaire, une commission de services publics, une commission hydro-électrique, une commission de transport, une commission de voirie de banlieue, un conseil d'une bibliothèque publique, un conseil de santé, une commission de police, un office de protection de la nature, un conseil d'administration de district de l'aide sociale, une régie locale des services publics, un conseil de planification, une régie des routes locales, un village partiellement autonome ou un comité ou un conseil de gestion conjoints créés en vertu de la *Loi sur les municipalités*;
- c) un organisme, un conseil, une commission, une personne morale ou une autre entité désignés comme institution dans les règlements. («institution»)

L.R.O. 1980,
chap. 302

«ministre» Le président du Conseil de gestion du gouvernement. («Minister»)

«personne responsable» À l'égard d'une institution, s'entend du particulier ou de l'organisme qui est désigné en cette qualité en vertu de l'article 3. («head»)

«règlements» Les règlements pris en application de la présente loi. («regulations»)

«renseignements personnels» Renseignements consignés ayant trait à un particulier qui peut être identifié. S'entend notamment :

- a) des renseignements concernant la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial ou familial de celui-ci;
- b) des renseignements concernant l'éducation, les antécédents médicaux, psychiatriques, psychologiques, criminels ou professionnels de ce particulier ou des renseignements reliés à sa participation à une opération financière;
- c) d'un numéro d'identification, d'un symbole ou d'un autre signe individuel qui lui est attribué;
- d) de l'adresse, du numéro de téléphone, des empreintes digitales ou du groupe sanguin de ce particulier;

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; (“document”)

“regulations” means the regulations made under this Act.
 (“règlements”)

Personal
information

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

Bodies
considered
part of
municipal
corporation

(3) Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of “institution” in subsection (1) or designated under clause (c) of the definition of “institution” in subsection (1) is deemed to be a part of the municipal corporation for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipal corporation.

Designation
of head

3.—(1) The members of the council of a municipal corporation may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipal corporation for the purposes of this Act.

Idem

(2) The members elected or appointed to the board, commission or other body that is an institution other than a municipal corporation may designate in writing from among themselves an individual or a committee of the body to act as head of the institution for the purposes of this Act.

If no
designation

(3) If no person is designated as head under this section, the head shall be,

- (a) the council, in the case of a municipal corporation;
and

- e) de ses opinions ou de ses points de vue personnels, sauf s'ils se rapportent à un autre particulier;
- f) de la correspondance ayant explicitement ou implicitement un caractère personnel et confidentiel, adressée par le particulier à une institution, de même que des réponses à cette correspondance originale susceptibles d'en révéler le contenu;
- g) des opinions et des points de vue d'une autre personne au sujet de ce particulier;
- h) du nom du particulier, s'il figure parmi d'autres renseignements personnels qui le concernent, ou si sa divulgation risque de révéler d'autres renseignements personnels au sujet du particulier. («personal information»)

(2) Les renseignements personnels excluent ceux qui concernent un particulier décédé depuis plus de trente ans.

Renseignements
personnels

(3) Les organismes, conseils, commissions, personnes morales ou autres entités qui ne sont pas mentionnés à l'alinéa b) de la définition d'«institution» au paragraphe (1) ou désignés en vertu de l'alinéa c) de cette définition, sont réputés faire partie d'une municipalité pour l'application de la présente loi si tous leurs membres, ou leurs dirigeants sont nommés ou choisis par le conseil de la municipalité, ou nommés ou choisis en vertu des pouvoirs de ce conseil.

Entités réputées faire partie d'une municipalité

3 (1) Les membres du conseil de la municipalité peuvent, par règlement municipal, désigner une personne membre du conseil ou un comité de celui-ci à titre de personne responsable de la municipalité pour l'application de la présente loi.

Désignation de la
personne
responsable

(2) Les membres élus ou nommés à un conseil, à une commission ou à un autre organisme qui est une institution, à l'exception d'une municipalité, peuvent, par écrit, désigner une personne membre de l'organisme ou un comité de celui-ci à titre de personne responsable de l'institution pour l'application de la présente loi.

Idem

(3) Si personne n'est désigné à titre de personne responsable en vertu du présent article, la personne responsable est, selon le cas :

Aucune
désignation

- a) le conseil municipal, dans le cas d'une municipalité;

- (b) the members elected or appointed to the board, commission or other body in the case of an institution other than a municipal corporation.

PART I

FREEDOM OF INFORMATION

ACCESS TO RECORDS

Right of
access

4.—(1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

Severability
of record

(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Obligation to
disclose

5.—(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

Contents of
notice

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part should not be disclosed, those representations will be considered by the head.

- b) les membres élus ou nommés au conseil, à la commission ou à l'autre organisme, dans le cas d'une institution qui n'est pas une municipalité.

PARTIE I

ACCÈS À L'INFORMATION

ACCÈS AUX DOCUMENTS

4 (1) Chacun a un droit d'accès à un document ou une partie de celui-ci dont une institution a le contrôle ou la garde, sauf si le document ou la partie fait l'objet d'une exception aux termes des articles 6 à 15. Droit d'accès

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document qui contient des renseignements faisant l'objet d'une exception en vertu des articles 6 à 15, divulgue la partie du document qui peut raisonnablement en être extraite sans divulguer ces renseignements. Extrait du document

5 (1) Malgré toute autre disposition de la présente loi, la personne responsable qui a des motifs raisonnables et probables de croire qu'il y va de l'intérêt public, divulgue au public ou aux personnes intéressées dans les meilleurs délais, compte tenu des circonstances, le document révélateur d'un grave danger pour la santé ou la sécurité du public ou pour l'environnement. Obligation de divulguer un document

(2) La personne responsable fait aviser dans la mesure du possible toutes les personnes concernées par les renseignements que contient le document visé au paragraphe (1) avant d'en divulguer la teneur. Avis

(3) L'avis comporte : Teneur de l'avis

- a) une déclaration portant que la personne responsable a l'intention de communiquer la totalité ou une partie d'un document et que cette divulgation peut avoir une incidence sur les intérêts de la personne;
- b) une description de la teneur du document ou de la partie du document qui concerne cette personne;
- c) une déclaration portant que la personne responsable tiendra compte des observations que lui présentera sans délai cette personne, si cette dernière expose les motifs pour lesquels le document ne devrait pas être divulgué, même en partie.

Representa-
tions

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

EXEMPTIONS

Draft
by-laws, etc.

6.—(1) A head may refuse to disclose a record,

- (a) that contains a draft of a by-law or a draft of a private bill; or
- (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

- (a) in the case of a record under clause (1) (a), the draft has been considered in a meeting open to the public;
- (b) in the case of a record under clause (1) (b), the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than twenty years old.

Advice or
recommen-
dations

7.—(1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator;

(4) La personne qui reçoit l'avis visé au paragraphe (2) peut présenter sans délai à la personne responsable ses observations exposant les motifs pour lesquels ce document ne devrait pas être divulgué, même en partie. Observations

EXCEPTIONS

6 (1) Une personne responsable peut refuser de divulguer un document : Projets de règlements municipaux

- a) qui contient un projet de règlement municipal ou un avant-projet de loi privée;
- b) qui révèle l'essentiel des délibérations d'un conseil, d'une commission ou d'une autre entité ou d'un comité de ceux-ci lors d'une réunion si une loi autorise la tenue de cette réunion en l'absence du public.

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser de divulguer un document en vertu de ce paragraphe si, selon le cas : Exception

- a) le projet de règlement municipal ou l'avant-projet de loi privée a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) a);
- b) l'objet des délibérations a fait l'objet d'une réunion ouverte au public, dans le cas d'un document visé à l'alinéa (1) b);
- c) le document date de plus de vingt ans.

7 (1) La personne responsable peut refuser de divulguer un document qui aurait pour effet de révéler les conseils ou les recommandations émanant d'un dirigeant ou d'un employé d'une institution ou d'un expert-conseil dont les services ont été retenus par cette institution. Conseils ou recommandations

(2) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document qui comporte l'un des éléments suivants : Exceptions

- a) de la documentation portant sur des faits;
- b) un sondage statistique;
- c) le rapport d'un estimateur;

- (d) an environmental impact statement or similar record;
- (e) a report or study on the performance or efficiency of an institution;
- (f) a feasibility study or other technical study, including a cost estimate, relating to a policy or project of an institution;
- (g) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (h) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program;
- (i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;
- (j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (k) the reasons for a final decision, order or ruling of an officer or an employee of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution.

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if the record is more than twenty years old.

Law
enforcement

8.—(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;

- d) un rapport sur d'éventuelles répercussions sur l'environnement ou un document semblable;
- e) le rapport ou le résultat d'une étude relative au rendement ou à l'efficacité d'une institution;
- f) une étude de faisabilité ou autre étude technique, y compris une estimation des coûts, reliée à une politique ou à un projet d'une institution;
- g) le rapport qui comporte les résultats d'une recherche effectuée sur le terrain préalablement à la formulation d'une politique proposée;
- h) la proposition ou le plan définitifs en vue de la modification d'un programme existant ou de l'établissement d'un nouveau programme d'une institution, y compris son estimation budgétaire;
- i) le rapport d'un comité ou d'une entité semblable d'une institution chargés de dresser un rapport sur une question précise;
- j) le rapport d'une entité liée à une institution et constituée dans le but de mener des enquêtes suivies de rapports ou de recommandations destinés à cette institution;
- k) les motifs à l'appui de la décision, de l'arrêté, de l'ordonnance, de l'ordre ou de la directive définitifs du fonctionnaire ou d'un employé d'une institution et rendus à la fin ou au cours de l'exercice d'un pouvoir discrétionnaire conféré par un texte législatif ou un projet mis en application par cette institution, ou en vertu de ceux-ci.

(3) Malgré le paragraphe (1), la personne responsable ne doit pas refuser, en vertu de ce paragraphe, de divulguer un document si le document date de plus de vingt ans. Idem

8 (1) La personne responsable peut refuser de divulguer un document si la divulgation devrait avoir pour effet probable : Exécution de la loi

- a) de faire obstacle à une question qui concerne l'exécution de la loi;

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

- b) de faire obstacle à l'enquête menée préalablement à une poursuite judiciaire ou qui y aboutira vraisemblablement;
- c) de révéler des techniques et procédés d'enquête qui sont présentement ou qui seront vraisemblablement en usage dans l'exécution de la loi;
- d) de divulguer l'identité d'une source d'information confidentielle reliée à l'exécution de la loi ou de divulguer des renseignements obtenus uniquement de cette source;
- e) de constituer une menace à la vie ou à la sécurité physique d'un agent d'exécution de la loi ou d'une autre personne;
- f) de priver une personne de son droit à un procès équitable ou à un jugement impartial;
- g) de faire obstacle à l'obtention de renseignements secrets reliés à l'exécution de la loi à l'égard de certaines organisations ou de certaines personnes ou de les révéler;
- h) de révéler un document qui a été confisqué à une personne par un agent de la paix, conformément à une loi ou à un règlement;
- i) de compromettre la sécurité d'un immeuble ou d'un véhicule servant au transport de certains articles ou au système ou mode de protection de ces articles, dont la protection est normalement exigée;
- j) de faciliter l'évasion d'une personne légalement détenue;
- k) de compromettre la sécurité d'un centre de détention légale;
- l) de faciliter la perpétration d'un acte illégal ou d'entraver la répression du crime.

(2) La personne responsable peut refuser de divulguer un document : Idem

- a) qui constitue un rapport dressé au cours de l'exécution de la loi, de l'inspection ou de l'enquête

- (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to
confirm or
deny
existence of
record
Exception

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Relations
with
governments

9.—(1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or

menées par un organisme chargé d'assurer et de réglementer l'observation de la loi;

- b) relié à l'exécution de la loi et dont la divulgation constituerait une infraction à une loi du Parlement;
- c) relié à l'exécution de la loi et dont la divulgation donnerait raisonnablement lieu de craindre que son auteur, la personne qui est citée ou dont les mots ont été paraphrasés dans le document, ne soit l'objet de poursuites civiles;
- d) où figurent les renseignements reliés aux antécédents, à la surveillance ou à la mise en liberté d'une personne confiée au contrôle ou à la surveillance d'une administration correctionnelle.

(3) La personne responsable peut refuser de confirmer ou de nier l'existence du document visé au paragraphe (1) ou (2).

Refus de confirmer ou de nier l'existence d'un document

(4) Malgré l'alinéa (2) a), la personne responsable divulgue le document qui constitue un rapport dressé dans le cadre d'inspections de routine effectuées par un organisme autorisé à assurer et à réglementer l'observation d'une loi particulière de l'Ontario.

Exception

(5) Les paragraphes (1) et (2) ne s'appliquent pas au document qui a trait au degré de succès atteint dans le cadre d'un programme d'exécution de la loi, y compris les analyses statistiques, sauf si la divulgation de ce document est susceptible de nuire, de faire obstacle ou de porter atteinte à la poursuite des objectifs visés à ces paragraphes.

Idem

9 (1) La personne responsable refuse de divulguer un document si la divulgation devait avoir pour effet probable de révéler des renseignements confidentiels confiés à l'institution :

Rapports avec des gouvernements

- a) par le gouvernement du Canada;
- b) par le gouvernement de l'Ontario ou d'une province ou d'un territoire du Canada;
- c) par le gouvernement d'un pays ou d'un État étrangers;
- d) par un organisme d'un gouvernement visé à l'alinéa a), b) ou c);

- (e) an international organization of states or a body of such an organization.

Idem

(2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

Third party
information

10.—(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Consent to
disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

Economic
and other
interests

11. A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could

- e) par une organisation internationale d'États ou par l'une de ses entités.

(2) La personne responsable peut divulguer un document auquel s'applique le paragraphe (1) si le gouvernement, l'organisme ou l'organisation qui a confié les renseignements à l'institution y consent.

Idem

10 (1) La personne responsable refuse de divulguer un document qui révèle un secret industriel ou des renseignements d'ordre scientifique, technique, commercial, financier ou qui ont trait aux relations de travail, dont le caractère confidentiel est implicite ou explicite et dont la divulgation aurait pour effet probable :

Renseignements de tiers

- a) de nuire gravement à la situation concurrentielle ou d'entraver gravement les négociations contractuelles ou autres d'une personne, d'un groupe de personnes ou d'une organisation;
- b) d'interrompre la communication de renseignements semblables à l'institution, alors qu'il serait dans l'intérêt public que cette communication se poursuive;
- c) de causer des pertes ou des profits indus à une personne, un groupe de personnes, un comité, une institution ou un organisme financiers;
- d) de divulguer des renseignements fournis à un conciliateur, un médiateur, un agent des relations de travail ou une autre personne nommée pour régler un conflit de relations de travail, ou de divulguer le rapport de l'une de ces personnes.

(2) La personne responsable peut divulguer le document visé au paragraphe (1) si la personne concernée par les renseignements y consent.

Consentement à la divulgation

11 La personne responsable peut refuser de divulguer un document qui comporte :

Intérêts économiques et autres

- a) des secrets industriels ou des renseignements d'ordre financier, commercial, scientifique ou technique qui sont la propriété d'une institution et qui ont une valeur pécuniaire actuelle ou éventuelle;
- b) des renseignements résultant d'une recherche effectuée par l'employé d'une institution et dont la divul-

reasonably be expected to deprive the employee of priority of publication;

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

1981, c. 70

Solicitor-
client
privilege

12. A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Danger to
safety or
health

13. A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

gation aurait pour effet probable de retirer à l'employé la primauté de la publication;

- c) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts économiques d'une institution ou à sa situation concurrentielle;
- d) des renseignements dont la divulgation aurait pour effet probable de nuire aux intérêts financiers d'une institution;
- e) des positions, projets, lignes de conduite, normes ou instructions devant être observés par une institution ou pour son compte dans le cadre d'une négociation actuelle ou éventuelle;
- f) des projets relatifs à la direction du personnel ou à la gestion d'une institution qui n'ont pas encore été mis en application ou rendus publics;
- g) des renseignements, y compris les projets, les politiques ou les entreprises proposés d'une institution dont la divulgation aboutirait vraisemblablement à la divulgation prématurée d'un programme à l'état de projet ou occasionnerait des pertes ou profits indus à une personne;
- h) des questions devant servir à un examen ou d'un test à des fins scolaires;
- i) des observations faites par une municipalité qui est partie à une question ou par une autre entité en vertu de la *Loi de 1981 sur les négociations de limites municipales*, si la question à laquelle ces observations sont reliées n'a pas été résolue aux termes de cette loi.

1981, chap. 70

12 La personne responsable peut refuser de divulguer un document protégé par le secret professionnel de l'avocat. Il en est de même d'un document élaboré par l'avocat-conseil employé ou engagé par une institution, ou pour le compte de celui-ci, qui l'utilise soit dans la communication de conseils juridiques, soit à l'occasion ou en prévision d'une instance.

Secret professionnel de l'avocat

13 La personne responsable peut refuser de divulguer le document dont la divulgation aurait pour effet probable de compromettre gravement la santé ou la sécurité d'un particulier.

Menace à la santé ou à la sécurité

Personal
privacy

14.—(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re
invasion of
privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

14 (1) La personne responsable ne divulgue des renseignements personnels qu'au particulier concerné par ceux-ci, sauf :

Vie privée

- a) à la demande écrite ou du consentement préalables du particulier concerné si ce dernier a lui-même le droit d'y avoir accès;
- b) lors d'une situation d'urgence où il existe un risque immédiat pour la santé ou la sécurité d'un particulier, si un avis de la divulgation est ensuite envoyé par courrier au particulier concerné par les renseignements à sa dernière adresse connue;
- c) les renseignements personnels recueillis et conservés dans le but précis de constituer un document accessible au grand public;
- d) en vertu d'une loi de l'Ontario ou du Canada qui autorise expressément la divulgation;
- e) à des fins de recherche si :
 - (i) la divulgation est conforme aux conditions ou à l'utilisation envisagées au moment où ces renseignements ont été divulgués, recueillis ou obtenus,
 - (ii) les fins de recherche à l'origine de la divulgation ne peuvent être raisonnablement atteintes que si les renseignements sont divulgués sous une forme qui permette l'identification individuelle,
 - (iii) la personne devant recevoir le document a accepté de se conformer aux conditions relatives à la sécurité et au caractère confidentiel qui sont prescrites par les règlements;
- f) la divulgation ne constitue pas une atteinte injustifiée à la vie privée.

(2) Aux fins de déterminer si la divulgation de renseignements personnels constitue une atteinte injustifiée à la vie privée, la personne responsable tient compte des circonstances pertinentes et examine notamment si :

Critères :
atteinte injustifiée à la vie privée

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Presumed
invasion of
privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

- a) la divulgation est souhaitable parce qu'elle permet au public de surveiller de près les activités de l'institution;
- b) l'accès aux renseignements personnels peut promouvoir une amélioration de la santé et de la sécurité publiques;
- c) l'accès aux renseignements personnels rendra l'achat de biens et de services susceptible d'un choix plus judicieux;
- d) les renseignements personnels ont une incidence sur la juste détermination des droits qui concernent l'auteur de la demande;
- e) le particulier visé par les renseignements personnels risque d'être injustement lésé dans ses intérêts pécuniaires ou autres;
- f) les renseignements personnels sont d'une nature très délicate;
- g) l'exactitude et la fiabilité des renseignements personnels sont douteuses;
- h) le particulier visé par les renseignements personnels les a communiqués à l'institution à titre confidentiel;
- i) la divulgation est susceptible de porter injustement atteinte à la réputation d'une personne dont il est fait mention dans le document.

(3) Est présumée constituer une atteinte injustifiée à la vie privée, la divulgation de renseignements personnels :

Atteinte présumée à la vie privée

- a) relatifs aux antécédents, au diagnostic, à la maladie, au traitement ou à l'évaluation d'ordre médical, psychiatrique ou psychologique;
- b) qui ont été recueillis et peuvent être identifiés comme partie du dossier d'une enquête reliée à une contravention possible à la loi, sauf dans la mesure où la divulgation est nécessaire aux fins d'instituer des poursuites judiciaires ou de continuer l'enquête;

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

Limitation

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

Refusal to confirm or deny existence of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

Information soon to be published

15. A head may refuse to disclose a record if,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record

- c) relatifs à l'admissibilité aux prestations d'aide sociale ou de service social ou à l'établissement du niveau des prestations;
- d) qui ont trait aux antécédents professionnels ou académiques;
- e) qui ont été relevés dans une déclaration d'impôt ou recueillis à des fins de perception fiscale;
- f) qui précisent la situation financière, le revenu, l'actif, le passif, la situation nette, les soldes bancaires, les antécédents ou les activités d'ordre financier ou la solvabilité d'un particulier;
- g) qui comportent des recommandations ou des évaluations personnelles, des renseignements ayant trait à la moralité ou à des évaluations de personnel;
- h) qui indiquent la race, l'origine ethnique, l'orientation sexuelle ou les croyances ou allégeances religieuses ou politiques du particulier.

(4) Malgré le paragraphe (3), ne constitue pas une atteinte injustifiée à la vie privée, la divulgation portant sur les renseignements suivants :

Restrictions

- a) le classement, les barèmes de traitement et d'avantages sociaux ou les responsabilités professionnelles d'un particulier qui est ou a été dirigeant ou employé d'une institution;
- b) les modalités d'ordre financier ou autres d'un contrat de louage de services personnels intervenu entre un particulier et une institution.

(5) La personne responsable peut refuser de confirmer ou de nier l'existence d'un document dont la divulgation constituerait une atteinte injustifiée à la vie privée.

Refus de confirmer ou de nier l'existence d'un document

15 La personne responsable peut refuser de divulguer un document si, selon le cas :

Publication prochaine des renseignements

- a) le document ou les renseignements qu'il comporte ont déjà été publiés ou sont accessibles au public;
- b) la personne responsable a des motifs raisonnables de croire que le document ou les renseignements

will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Exemptions
not to apply

16. An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

ACCESS PROCEDURE

Request

17.—(1) A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

Sufficiency of
detail

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Definition
1987, c. 25

18.—(1) In this section, “institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act, 1987*. (“institution”)

Request to
be forwarded

(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

Transfer of
request

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

seront publiés par une institution dans les quatre-vingt-dix jours de la demande ou au cours de la période de temps additionnelle nécessaire à leur impression ou à leur traduction à cette fin.

16 Les exceptions à la divulgation visées aux articles 7, 9, 10, 11, 13 et 14 ne s'appliquent pas si la nécessité manifeste de divulguer le document dans l'intérêt public l'emporte sans conteste sur les fins visées par les exceptions.

Non-application des exceptions

PROCÉDURE D'ACCÈS

17 (1) L'auteur de la demande d'accès à un document s'adresse par écrit à l'institution qui, à son avis, a la garde ou le contrôle du document. Il fournit les détails suffisants qui permettront à un employé expérimenté de l'institution à la suite d'une démarche normale, d'identifier le document.

Demande

(2) Dans le cas d'insuffisance de la description du document requis, l'institution en avise l'auteur de la demande et lui fournit l'aide nécessaire afin de formuler celle-ci à nouveau et de la rendre conforme au paragraphe (1).

Détails suffisants

18 (1) Dans le présent article, «institution» s'entend en outre d'une institution au sens de l'article 2 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*. («institution»)

Définition
1987, chap. 25

(2) La personne responsable de l'institution qui reçoit une demande d'accès à un document dont l'institution n'a ni la garde ni le contrôle, fait les recherches raisonnables afin de déterminer si une autre institution en a la garde ou le contrôle. Si la personne responsable détermine que tel est le cas, la personne responsable, dans les quinze jours de la réception de la demande :

Acheminement de la demande

- a) d'une part, renvoie celle-ci à l'institution concernée;
- b) d'autre part, avise par écrit l'auteur de la demande du renvoi à une autre institution.

(3) La personne responsable de l'institution qui reçoit une demande d'accès à un document, lequel, à son avis, intéresse davantage une autre institution, peut transférer la demande, et, si nécessaire, le document lui-même à cette autre institution dans les quinze jours de la réception de la demande. La personne responsable qui effectue ce transfert en informe alors par écrit l'auteur de la demande.

Transfert de la demande

Greater
interest

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

When
transferred
request
deemed
made

(5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

Notice by
head

19. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20 and 21, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

Extension of
time

20.—(1) A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

(4) Pour l'application du paragraphe (3), un document intéresse davantage une institution autre que celle qui reçoit la demande d'accès si, selon le cas :

Ressort d'une
autre
institution

- a) le document a d'abord été constitué par l'autre institution ou pour son compte;
- b) l'autre institution a reçu la première ce document ou une copie de celui-ci, si le document n'a pas d'abord été constitué par une institution ou pour son compte.

(5) La demande renvoyée ou transférée en vertu du paragraphe (2) ou (3) est réputée présentée à l'autre institution le jour de sa réception par l'institution originale.

Date de la
demande

19 Sous réserve des articles 20 et 21, lorsqu'une personne présente une demande d'accès à un document, la personne responsable de l'institution qui reçoit la demande ou, si la demande fait l'objet d'un renvoi ou d'un transfert aux termes de l'article 18, la personne responsable de l'institution destinataire du renvoi ou du transfert, prend, dans les trente jours de sa réception, les mesures suivantes :

Avis donné
par la
personne
responsable

- a) elle avise par écrit l'auteur de la demande qu'elle lui donnera ou non accès à la totalité ou à une partie du document;
- b) si l'accès doit être accordé, elle donne accès à la totalité ou à une partie du document à l'auteur de la demande et prend les mesures nécessaires à sa production, si besoin est.

20 (1) La personne responsable peut proroger le délai imparti à l'article 19 pour un temps raisonnable compte tenu des circonstances si, selon le cas :

Prorogation
du délai

- a) la demande comporte la production ou la consultation d'un grand nombre de documents et que l'observation du délai imparti aurait pour effet d'entraver abusivement les activités normales de l'institution;
- b) il est nécessaire d'avoir des consultations avec une personne à l'extérieur de l'institution afin de répondre à la demande et que ces consultations ne peuvent pas être normalement terminées avant l'expiration du délai imparti.

Notice of
extension

(2) A head who extends the time limit under subsection (1) shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension.

Notice to
affected
person

21.—(1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14 (1) (f).

Contents of
notice

(2) The notice shall contain,

- (a) a statement that the head intends to disclose a record or part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Time for
notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, if there has been an extension of a time limit under subsection 20 (1), within that extended time limit.

(2) La personne responsable qui proroge le délai imparti aux termes du paragraphe (1) en informe par écrit l'auteur de la demande et précise notamment :

Avis de
prorogation

- a) la durée du délai prorogé;
- b) les motifs à l'appui;
- c) le fait que l'auteur de la demande peut s'adresser au commissaire afin d'obtenir une révision de la prorogation.

21 (1) Avant de permettre l'accès à un document, la personne responsable, donne à la personne concernée un avis écrit conformément au paragraphe (2), lorsque la personne responsable a des raisons de croire :

Avis à la
personne
concernée

- a) que le document comporte certains renseignements visés au paragraphe 10 (1) susceptibles de porter atteinte aux intérêts d'une personne autre que l'auteur de la demande;
- b) qu'il s'agit de renseignements personnels dont la divulgation pourrait constituer une atteinte injustifiée à la vie privée pour l'application de l'alinéa 14 (1) f).

(2) L'avis comporte :

Teneur de
l'avis

- a) une mention que la personne responsable a l'intention de divulguer la totalité ou une partie d'un document susceptible de porter atteinte aux intérêts de la personne concernée;
- b) un exposé de la teneur de la totalité ou de la partie du document qui a trait à cette personne;
- c) une mention que la personne concernée peut, dans les vingt jours de l'envoi de l'avis, faire des observations à la personne responsable exposant les raisons pour lesquelles le document ne devrait pas être divulgué en totalité ou en partie.

(3) L'avis visé au paragraphe (1) est donné dans les trente jours de la réception de la demande d'accès, ou au cours du délai prorogé aux termes du paragraphe 20 (1).

Délai pour
donner l'avis

Notice of
delay

(4) A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

- (a) that the disclosure of the record or part may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record.

Representa-
tion re
disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

Representa-
tion in
writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

Decision re
disclosure

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within thirty days after the notice under subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given.

Notice of
head's
decision to
disclose

(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and

(4) La personne responsable qui donne un avis en vertu du paragraphe (1) donne en outre à l'auteur de la demande un avis écrit du retard qui énonce les faits suivants :

Avis du retard

- a) la divulgation de la totalité ou d'une partie de ce document peut porter atteinte aux intérêts d'un tiers;
- b) l'occasion est fournie à ce tiers de faire des observations relativement à la divulgation du document;
- c) la personne responsable rendra dans les trente jours sa décision de divulguer ou non le document.

(5) La personne concernée par les renseignements peut, dans les vingt jours de l'envoi de l'avis donné en vertu du paragraphe (1), faire des observations à la personne responsable exposant les raisons pour lesquelles le document ou la partie de celui-ci ne devrait pas être divulgué.

Observations
relatives à la
divulcation

(6) Les observations faites aux termes du paragraphe (5) le sont par écrit sauf si la personne responsable permet qu'elles soient faites de vive voix.

Observations
par écrit

(7) Dans les trente jours de l'envoi de l'avis visé au paragraphe (1), la personne responsable rend sa décision de permettre ou non la divulgation du document ou de la partie de celui-ci et informe par écrit de sa décision la personne concernée par les renseignements ainsi que l'auteur de la demande. Toutefois, la personne responsable ne prend pas ces mesures avant la première des éventualités suivantes à se réaliser :

Décision de
permettre la
divulcation

- a) la réception de la réponse à l'avis donné à la personne concernée par les renseignements;
- b) l'expiration d'un délai de vingt et un jours après l'envoi de l'avis.

(8) La personne responsable qui décide de divulguer un document ou une partie de celui-ci en vertu du paragraphe (7) mentionne dans l'avis :

Avis de la
décision de la
personne
responsable

- a) d'une part, que la personne concernée par les renseignements peut interjeter appel de la décision devant le commissaire dans les trente jours de l'envoi de l'avis;

- (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within thirty days after the notice is given.

Access to be
given unless
affected
person
appeals

(9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Contents of
notice of
refusal

22.—(1) Notice of refusal to give access to a record or part under section 19 shall set out,

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
- (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(2) A head who refuses to confirm or deny the existence of a record as provided in subsection 8 (3) (law enforcement) or subsection 14 (5) (unjustified invasion of personal privacy) shall state in the notice given under section 19,

- (a) that the head refuses to confirm or deny the existence of the record;
- (b) the provision of this Act on which the refusal is based;

- b) d'autre part, que l'auteur de la demande aura accès à la totalité ou à une partie du document à moins qu'un appel de la décision ne soit interjeté dans les trente jours de l'envoi de l'avis.

(9) À la suite de sa décision à cet effet prise en vertu du paragraphe (7), la personne responsable donne à l'auteur de la demande, dans les trente jours de l'envoi de l'avis en vertu du paragraphe (7), accès au document ou à une partie de celui-ci, à moins que le commissaire n'ait reçu une demande de révision de la décision de la part de la personne concernée par les renseignements.

Accès permis
sauf appel

22 (1) L'avis du refus de donner accès à la totalité ou à une partie du document en vertu de l'article 19, énonce les faits suivants :

Teneur de
l'avis de
refus

- a) si le document n'existe pas :
 - (i) qu'il n'existe pas de tel document,
 - (ii) que l'auteur de la demande peut interjeter appel devant le commissaire de la question de l'existence du document;
- b) si le document existe :
 - (i) la disposition précise de la présente loi à l'appui du refus,
 - (ii) le motif pour lequel la disposition s'applique au document,
 - (iii) le nom et le titre de l'auteur de la décision,
 - (iv) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire.

(2) La personne responsable qui refuse de confirmer ou de nier l'existence d'un document aux termes du paragraphe 8 (3) (exécution de la loi) ou du paragraphe 14 (5) (atteinte injustifiée à la vie privée), mentionne dans l'avis donné en vertu de l'article 19 les points suivants :

Idem

- a) le fait que la personne responsable refuse de confirmer ou de nier l'existence du document;
- b) la disposition de la présente loi sur laquelle se fonde le refus;

- (c) the name and office of the person responsible for making the decision; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(3) A head who refuses to disclose a record or part under subsection 21 (7) shall state in the notice given under subsection 21 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Deemed refusal

(4) A head who fails to give the notice required under section 19 or subsection 21 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

Copy of record

23.—(1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

Access to original record

(2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

Copy of part

(3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

- c) le nom et le titre de l'auteur de la décision;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(3) La personne responsable qui refuse de divulguer un document en totalité ou en partie en vertu du paragraphe 21 (7), mentionne dans l'avis donné en vertu de ce paragraphe les points suivants :

Idem

- a) la disposition précise de la présente loi à l'appui du refus;
- b) le motif pour lequel la disposition visée à l'alinéa a) s'applique au document;
- c) le nom et le titre de l'auteur de la décision de refuser l'accès;
- d) le fait que l'auteur de la demande peut interjeter appel de la décision devant le commissaire afin d'obtenir la révision de la décision.

(4) La personne responsable qui, relativement à un document, fait défaut de donner l'avis qu'exige l'article 19 ou le paragraphe 21 (7), est réputée avoir donné avis de son refus de permettre l'accès au document le dernier jour du délai imparti à cette fin.

Avis réputé
donné du
refus

23 (1) Sous réserve du paragraphe (2), il est délivré à la personne à qui il y est donné accès en vertu de la présente loi, copie de la totalité ou d'une partie du document visé, sauf si la nature ou la longueur de ce document en rendent la reproduction trop difficile. Dans ce cas, il est donné à cette personne l'occasion de consulter la totalité ou la partie du document.

Copie du
document

(2) La personne responsable, dans la mesure du possible, donne à la personne qui en fait la demande, l'occasion de consulter un document en totalité ou en partie.

Accès à
l'original du
document

(3) Si une personne consulte un document en totalité ou en partie et souhaite en faire copier des extraits, il lui est donné copie de ces extraits sauf si la nature ou la longueur de ces extraits en rendent la reproduction trop difficile.

Extraits

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication
of
information
re institutions

24.—(1) The Minister shall cause to be published a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made; and
- (b) the title of the head of the institution.

Idem

(2) The Minister shall cause the compilation to be published within one year of the coming into force of this Act and at least once every three years thereafter.

Information
available for
inspection

25.—(1) A head shall cause to be made available for inspection and copying by the public information containing,

- (a) a description of the organization and responsibilities of the institution;
- (b) a list of the general classes or types of records in the custody or control of the institution;
- (c) the title, business telephone and business address of the head; and
- (d) the address to which a request under this Act should be made.

Idem

(2) The head shall ensure that the information made available is amended as required to ensure its accuracy.

Annual
report of
head

26.—(1) A head shall make an annual report, in accordance with subsection (2), to the Commissioner.

Contents of
report

(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;

PUBLICATION ET ACCESSIBILITÉ DE L'INFORMATION

24 (1) Le ministre fait publier un répertoire des institutions, qui indique à l'égard de chacune :

Publication de l'information concernant les institutions

- a) l'endroit où doit être présentée la demande d'accès à un document;
- b) le titre de la personne responsable de l'institution.

(2) Le ministre fait publier le répertoire dans l'année qui suit l'entrée en vigueur de la présente loi et au moins une fois tous les trois ans par la suite.

Idem

25 (1) Une personne responsable rend accessible au public un dossier de renseignements afin que le public puisse l'examiner et en prendre des copies. Le dossier comporte :

Renseignements rendus accessibles au public

- a) un exposé de la structure et des responsabilités de l'institution;
- b) un répertoire des catégories générales ou des genres de documents dont l'institution a la garde ou le contrôle;
- c) les titre, adresse et numéro de téléphone d'affaires de la personne responsable;
- d) l'adresse à laquelle une demande aux termes de la présente loi doit être présentée.

(2) La personne responsable veille à ce que les renseignements rendus accessibles au public soient modifiés en cas de besoin afin d'en assurer l'exactitude.

Idem

26 (1) La personne responsable présente un rapport annuel au commissaire conformément au paragraphe (2).

Rapport annuel de la personne responsable

(2) Le rapport préparé en vertu du paragraphe (1) fournit les précisions suivantes :

Teneur du rapport

- a) le nombre de demandes d'accès aux documents présentées à l'institution en vertu de la présente loi;
- b) le nombre de refus de divulguer un document de la part de la personne responsable, les dispositions de la présente loi à l'appui de ce refus, ainsi que la fréquence de renvoi à chacune des dispositions invoquées;

- (c) the number of uses or purposes for which personal information is disclosed if the use or purpose is not included in the statements of uses and purposes set forth under clauses 34 (1) (d) and (e);
- (d) the amount of fees collected by the institution under section 45; and
- (e) any other information indicating an effort by the institution to put into practice the purposes of this Act.

PART II

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application of Part

27. This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

Definition

28.—(1) In this section and in section 29, “personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act. (“renseignements personnels”)

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of collection

29.—(1) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*;
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);

- c) la quantité de fins et d'usages non visés par les relevés énoncés aux alinéas 34 (1) d) et e) pour lesquels des renseignements personnels sont divulgués;
- d) le montant des droits perçus par l'institution aux termes de l'article 45;
- e) les renseignements relatifs aux mesures prises par l'institution afin de réaliser les objets de la présente loi.

PARTIE II

PROTECTION DE LA VIE PRIVÉE

COLLECTE ET CONSERVATION DES RENSEIGNEMENTS PERSONNELS

27 La présente partie ne s'applique pas aux renseignements personnels qui sont conservés dans le but de constituer un document accessible au grand public.

Champ d'application de la partie

28 (1) Dans le présent article et dans l'article 29, «renseignements personnels» s'entend en outre des renseignements qui ne sont pas consignés et qui constituent, par ailleurs, des renseignements personnels au sens de la présente loi. («personal information»)

Définition

(2) Nul ne doit recueillir des renseignements personnels pour le compte d'une institution à moins d'y être autorisé expressément par une loi, ou à moins que ces renseignements servent à l'exécution de la loi ou soient nécessaires au bon exercice d'une activité autorisée par la loi.

Collecte des renseignements personnels

29 (1) L'institution ne doit recueillir les renseignements personnels que directement du seul particulier concerné par ces renseignements, sauf si :

Mode de collecte des renseignements

- a) ce particulier a autorisé un autre mode de collecte;
- b) leur divulgation à l'institution concernée est autorisée aux termes de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*;
- c) leur mode de collecte a reçu l'autorisation du commissaire en vertu de l'alinéa 46 c);

1987, chap. 25

R.S.O. 1980,
c. 89

- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.

Notice to
individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Exception

- (3) Subsection (2) does not apply if,
- (a) the head may refuse to disclose the personal information under subsection 8 (1) or (2) (law enforcement);
 - (b) the Minister waives the notice; or
 - (c) the regulations provide that the notice is not required.

- d) les renseignements sont consignés dans le rapport d'un organisme de renseignements au sens de la *Loi sur les renseignements concernant le consommateur*;
- e) les renseignements sont recueillis aux fins de déterminer les candidats possibles à une distinction ou à un prix en reconnaissance de réalisations exceptionnelles ou de services éminents;
- f) les renseignements sont recueillis aux fins d'une instance poursuivie ou envisagée devant soit un tribunal, soit un tribunal administratif à caractère judiciaire ou quasi-judiciaire;
- g) les renseignements sont recueillis aux fins de l'exécution de la loi;
- h) un autre mode de collecte des renseignements est autorisé par une loi ou en vertu de celle-ci.

L.R.O. 1980,
chap. 89

(2) Si les renseignements personnels sont recueillis pour le compte d'une institution, la personne responsable informe au moyen d'un avis le particulier concerné par les renseignements des faits suivants :

Avis
particulier

- a) l'autorité légale invoquée à cette fin;
- b) les fins principales auxquelles doivent servir ces renseignements personnels;
- c) les titre, adresse et numéro de téléphone d'affaires d'un fonctionnaire ou d'un employé de l'institution qui peut renseigner le particulier au sujet de cette collecte.

(3) Le paragraphe (2) ne s'applique pas si, selon le cas :

Exception

- a) la personne responsable peut refuser de divulguer les renseignements personnels en vertu du paragraphe 8 (1) ou (2) (exécution de la loi);
- b) le ministre accorde une dispense relativement à l'avis;
- c) les règlements prévoient que l'avis n'est pas requis.

Retention of
personal
information

30.—(1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Standard of
accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes.

Disposal of
personal
information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations.

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of
personal
information

31. An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*.

1987, c. 25

Where
disclosure
permitted

32. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is

30 (1) L'institution qui s'est servie des renseignements personnels les conserve durant le délai prescrit par les règlements afin de fournir l'occasion au particulier concerné par ces renseignements d'y obtenir lui-même accès.

Conservation
des ren-
seignements
personnels

(2) La personne responsable d'une institution veille à ce que seuls soient utilisés les renseignements personnels consignés dans ses documents qui sont exacts et à jour.

Norme
d'exactitude

(3) Le paragraphe (2) ne s'applique pas aux renseignements personnels recueillis aux fins de l'exécution de la loi.

Exception

(4) La personne responsable dispose des renseignements personnels dont l'institution a le contrôle conformément aux règlements.

Disposition
des ren-
seignements
personnels

UTILISATION ET DIVULGATION DES RENSEIGNEMENTS PERSONNELS

31 Une institution ne doit pas utiliser les renseignements personnels dont elle a la garde ou le contrôle, sauf :

Utilisation des
renseigne-
ments
personnels

- a) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur utilisation;
- b) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- c) à des fins qui justifient leur divulgation à l'institution en vertu de l'article 32 ou de l'article 42 de la *Loi de 1987 sur l'accès à l'information et la protection de la vie privée*.

1987, chap. 25

32 Une institution ne doit pas divulguer les renseignements personnels dont elle a la garde ou le contrôle, sauf :

Divulgation
permise

- a) conformément à la partie I;
- b) si la personne concernée par ces renseignements les a identifiés spécifiquement et a consenti à leur divulgation;
- c) aux fins pour lesquelles ils ont été obtenus ou recueillis ou à des fins compatibles;
- d) si la divulgation est faite au dirigeant ou à l'employé d'une institution à qui ce document est nécessaire dans l'exercice de ses fonctions et que cette divul-

necessary and proper in the discharge of the institution's functions;

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

Consistent
purpose

33. The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure.

gation est essentielle et appropriée à l'acquittement des fonctions de l'institution;

- e) afin de se conformer aux dispositions d'une loi de la Législature ou du Parlement, à un accord ou à un arrangement intervenus en vertu d'une telle loi ou à un traité;
- f) si la divulgation est faite par une institution chargée de l'exécution de la loi :
 - (i) soit à l'organisme semblable d'un pays étranger en vertu d'un arrangement, d'un accord écrit, d'un traité ou d'un pouvoir conféré par une loi,
 - (ii) soit à un autre organisme du Canada chargé de l'exécution de la loi;
- g) si la divulgation est faite à une institution quelconque ou à un organisme chargé de l'exécution de la loi au Canada aux fins de faciliter une enquête menée en vue d'une action en justice ou qui aboutira vraisemblablement à une action en justice;
- h) lors d'une situation d'urgence ayant une incidence sur la santé ou la sécurité d'un particulier, si un avis de la divulgation est envoyé sans tarder au particulier concerné par les renseignements à sa dernière adresse connue;
- i) dans une situation relative à un événement de famille afin de faciliter la communication avec un proche parent ou un ami d'un particulier blessé, malade ou décédé;
- j) au ministre;
- k) au commissaire à l'information et à la protection de la vie privée;
- l) au gouvernement du Canada ou au gouvernement de l'Ontario, afin de faciliter la vérification des programmes cofinancés.

33 Seule constitue une fin compatible au sens des alinéas 31 b) et 32 c), la fin invoquée à l'appui de l'utilisation ou de la divulgation de renseignements personnels à laquelle le particulier concerné par les renseignements pourrait raisonnable-

Fin
compatible

PERSONAL INFORMATION BANKS

Personal
information
bank index

34.—(1) A head shall make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;
- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

Ensure
accuracy

(2) The head shall ensure that the index is amended as required to ensure its accuracy.

Inconsistent
use or
disclosure

35.—(1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 34 (1) (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 34 (1) (e).

Idem

(2) A record of use or disclosure under subsection (1) forms part of the personal information to which it is attached or linked.

ment s'attendre lorsque ceux-ci ont été obtenus du particulier directement.

BANQUES DE RENSEIGNEMENTS PERSONNELS

34 (1) La personne responsable rend accessible pour fin d'examen par le public un répertoire des banques de données de renseignements personnels dont l'institution a la garde ou le contrôle et qui indique à l'égard de chaque banque :

Répertoire
des banques
de ren-
seignements
personnels

- a) son nom et le lieu où elle est située;
- b) l'autorité légale invoquée à l'appui de sa constitution;
- c) le genre de renseignements personnels qui y sont conservés;
- d) les usages réguliers faits de ces renseignements personnels;
- e) les personnes à qui les renseignements personnels sont divulgués de façon régulière;
- f) les catégories de particuliers au sujet desquels des renseignements personnels sont conservés;
- g) les politiques et pratiques applicables à la conservation et à la suppression des renseignements personnels.

(2) La personne responsable veille à ce que le répertoire soit modifié en cas de besoin afin d'en assurer l'exactitude.

Assurance de
l'exactitude

35 (1) La personne responsable annexe ou incorpore aux renseignements personnels dans une banque de renseignements personnels :

Utilisation ou
divulgarion
incompatibles

- a) un document décrivant l'usage fait de ces renseignements personnels à une fin autre que celle décrite à l'alinéa 34 (1) d);
- b) un document décrivant la divulgation faite de ces renseignements personnels à une personne autre que celle décrite à l'alinéa 34 (1) e).

(2) Un document visé au paragraphe (1) qui décrit l'usage ou la divulgation fait partie des renseignements personnels auxquels il est annexé ou incorporé.

Idem

RIGHT OF INDIVIDUALS TO WHOM PERSONAL INFORMATION
RELATES TO ACCESS AND CORRECTION

Right of
access to
personal
information

36.—(1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Right of
correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Request

37.—(1) An individual seeking access to personal information about the individual shall make a request for access in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Access
procedures

(2) Subsections 4 (2) and 17 (2) and sections 18, 19, 20, 21, 22 and 23 apply with necessary modifications to a request made under subsection (1).

Compre-
hensible
form

(3) If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general conditions under which the personal information is stored and used.

DROIT DU PARTICULIER CONCERNÉ PAR LES
RENSEIGNEMENTS
PERSONNELS À L'ACCÈS ET À LA RECTIFICATION

36 (1) Tout particulier a un droit d'accès :

Droit d'accès
aux ren-
seignements
personnels

- a) aux renseignements personnels qui le concernent qui sont mis en mémoire dans une banque de renseignements personnels dont une institution a la garde ou le contrôle;
- b) aux autres renseignements personnels qui le concernent dont une institution a la garde ou le contrôle et que le particulier indique avec suffisamment de précision pour permettre à l'institution de les récupérer sans trop de difficulté.

(2) Tout particulier à qui est accordé l'accès aux renseignements personnels aux termes du paragraphe (1) a le droit :

Droit à la
rectification

- a) de demander la rectification des renseignements personnels si, à son avis, ceux-ci sont erronés ou incomplets;
- b) d'exiger que soit annexée à ces renseignements une déclaration de désaccord qui fasse mention de la rectification demandée mais non effectuée;
- c) d'exiger que la personne ou l'entité à qui les renseignements ont été divulgués au cours de l'année qui précède la demande de rectification ou la déclaration de désaccord soient avisées de ceux-ci.

37 (1) Le particulier qui sollicite l'accès aux renseignements personnels qui le concernent en fait la demande par écrit à l'institution qui, à son avis, a le contrôle ou la garde de ces renseignements. Il identifie la banque de renseignements personnels ou identifie d'une autre façon l'endroit où sont consignés les renseignements.

Demande

(2) Les paragraphes 4 (2) et 17 (2) ainsi que les articles 18, 19, 20, 21, 22 et 23 s'appliquent avec les adaptations nécessaires à la demande présentée aux termes du paragraphe (1).

Procédure
d'accès

(3) La personne responsable veille à ce que les renseignements personnels soient communiqués, le cas échéant, au particulier sous une forme intelligible et d'une façon qui permet de connaître les conditions générales de leur stockage et de leur utilisation.

Forme
intelligible

Exemptions

38. A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;
- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (d) that is medical information if the disclosure could reasonably be expected to prejudice the mental or physical health of the individual; or
- (e) that is a research or statistical record.

PART III

APPEAL

Right to
appeal

39.—(1) A person may appeal any decision of a head under this Act to the Commissioner if,

- (a) the person has made a request for access to a record under subsection 17 (1);
- (b) the person has made a request for access to personal information under subsection 37 (1);
- (c) the person has made a request for correction of personal information under subsection 36 (2); or
- (d) the person is given notice of a request under subsection 21 (1).

38 La personne responsable peut refuser de divulguer au particulier concerné les renseignements personnels : Exceptions

- a) dont la divulgation est régie par l'article 6, 7, 8, 9, 10, 11, 12, 13 ou 15;
- b) si la divulgation constitue une atteinte injustifiée à la vie privée d'un autre particulier;
- c) qui sont constitués de documents d'appréciation ou d'avis divers recueillis dans le seul but d'établir l'aptitude, l'admissibilité ou les qualités requises relativement à un emploi ou à l'attribution de contrats et d'autres avantages par une institution si la divulgation avait pour effet de révéler la source de renseignements d'une institution dans une situation où il est normal de présumer que l'identité de cette source devait rester secrète;
- d) d'ordre médical dont la divulgation aurait pour effet probable de porter atteinte à la santé mentale ou physique du particulier;
- e) qui constituent un dossier de recherche ou un dossier statistique.

PARTIE III

APPELS

39 (1) Une personne peut interjeter appel devant le commissaire de toute décision d'une personne responsable si, selon le cas : Droit d'appel

- a) la personne a présenté une demande d'accès à un document aux termes du paragraphe 17 (1);
- b) la personne a présenté une demande d'accès à des renseignements personnels aux termes du paragraphe 37 (1);
- c) la personne a présenté une demande de rectification des renseignements personnels aux termes du paragraphe 36 (2);
- d) la personne a reçu l'avis d'une demande aux termes du paragraphe 21 (1).

Time for
application

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

Notice of
application
for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned and any other affected person of the notice of appeal.

Mediator to
try to effect
settlement

40. The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal.

Inquiry

41.—(1) If a settlement is not effected under section 40, the Commissioner shall conduct an inquiry to review the head's decision.

R.S.O. 1980,
c. 484
not to apply

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1).

Inquiry in
private

(3) The inquiry may be conducted in private.

Powers of
Commis-
sioner

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Record not
retained by
Commis-
sioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4).

Examination
on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of
entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination
under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry and, for that purpose, the Commissioner may administer an oath.

Evidence
privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

(2) L'appel aux termes du paragraphe (1) est interjeté par le dépôt auprès du commissaire d'un avis d'appel écrit, dans les trente jours de l'avis de la décision qui en fait l'objet.

Délai imparti

(3) Dès la réception de l'avis d'appel, le commissaire en informe la personne responsable de l'institution visée et toute personne intéressée.

Avis d'appel

40 Le commissaire peut autoriser un médiateur à enquêter sur les circonstances qui entourent l'appel et à tenter de parvenir au règlement de la question qui en fait l'objet.

Tentative de règlement par le médiateur

41 (1) Si un règlement n'est pas intervenu en vertu de l'article 40, le commissaire mène une enquête afin de réexaminer la décision de la personne responsable.

Enquête

(2) La *Loi sur l'exercice des compétences légales* ne s'applique pas à l'enquête menée en vertu du paragraphe (1).

Non-application du chap. 484 des L.R.O. de 1980

(3) L'enquête peut se dérouler à huis clos.

Enquête à huis clos

(4) Malgré les parties I et II de la présente loi, et toute autre loi ou privilège, le commissaire peut, dans le cadre d'une enquête, exiger que lui soit communiqué un document dont une institution a la garde ou le contrôle et en faire l'examen. Il peut de même aux fins de l'enquête pénétrer dans les locaux d'une institution et en faire l'inspection.

Pouvoirs du commissaire

(5) Le commissaire ne doit pas conserver les renseignements consignés dans un document communiqué en vertu du paragraphe (4).

Le commissaire ne conserve pas le document

(6) Malgré le paragraphe (4), la personne responsable peut exiger que le commissaire consulte sur place l'original du document.

Consultation sur place

(7) Avant de pénétrer dans des locaux en vertu du paragraphe (4), le commissaire informe la personne responsable de l'institution qui les occupe de l'objet de sa visite.

Avis de consultation

(8) Le commissaire peut assigner à comparaître et interroger sous serment la personne qui, à son avis, pourrait avoir des renseignements relatifs à l'enquête. Il peut faire prêter serment à cette fin.

Interrogatoire sous serment

(9) Les paroles prononcées, les renseignements fournis, les documents communiqués ou les objets produits par une personne au cours de l'enquête menée par le commissaire en

Éléments de preuve privilégiés

- Protection (10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.
- Idem (11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.
- R.S.C. 1985,
c. C-5
- Prosecution (12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.
- Representations (13) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.
- Right to counsel (14) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.
- Burden of proof **42.** If a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head.
- Order **43.**—(1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.
- Idem (2) If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.

vertu de la présente loi sont privilégiés, comme s'il s'agissait d'une instance devant un tribunal.

(10) Sauf à l'occasion du procès d'une personne par suite d'un parjure au moment de son propre témoignage sous serment, nulle déclaration ou réponse faite par cette personne ou une autre personne au cours d'une enquête menée par le commissaire n'est admissible en preuve devant un tribunal, dans le cadre d'une enquête, ou au cours d'une instance. Aucun témoignage rendu en cours d'instance devant le commissaire ne peut servir de preuve contre qui que ce soit.

Protection

(11) Le commissaire informe la personne qui fait une déclaration ou donne une réponse au cours de l'enquête menée devant lui, de son droit en vertu de l'article 5 de la *Loi sur la preuve au Canada*, de s'opposer à répondre à une question.

Idem

L.R.C. 1985,
chap. C-5

(12) Nul n'est passible de poursuite relativement à une infraction à une loi autre que la présente loi, pour s'être conformé à une exigence du commissaire aux termes du présent article.

Poursuite

(13) Il doit être fourni à la personne qui a présenté une demande d'accès à un document, à la personne responsable de l'institution concernée, ainsi qu'à toute personne intéressée par les renseignements, l'occasion de présenter leurs observations au commissaire. Toutefois, nul n'a le droit d'être présent lors de la présentation faite par une autre personne, d'avoir accès à ces observations ou de les commenter.

Observations

(14) La personne qui a présenté la demande d'accès à un document, la personne responsable de l'institution concernée ainsi que toute personne intéressée par les renseignements peuvent être représentées par un avocat ou par un représentant.

Droit à un
avocat

42 Lorsque la personne responsable refuse l'accès à la totalité ou à une partie d'un document, c'est à elle que revient le fardeau de prouver que ce dernier constitue une exception précisée par la présente loi.

Fardeau de la
preuve

43 (1) Lorsque la preuve est close dans le cadre de l'enquête, le commissaire rend une ordonnance qui règle les questions soulevées par l'appel.

Ordonnance

(2) Si le commissaire confirme la décision de la personne responsable de refuser la divulgation d'un document en totalité ou en partie, il ne doit pas enjoindre à celle-ci de divulguer le document ou la partie visée.

Idem

- Conditions (3) The Commissioner's order may contain any conditions the Commissioner considers appropriate.
- Notice of order (4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 39 (3) written notice of order.
- Delegation **44.** The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 8 to be produced and examined.

PART IV

GENERAL

- Costs **45.—**(1) If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,
- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
 - (b) the costs of preparing the record for disclosure;
 - (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
 - (d) shipping costs.
- Exception, personal information (2) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.
- Estimate of costs (3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.
- Waiver of payment (4) A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,
- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);

(3) Le commissaire peut assortir l'ordonnance des conditions qu'il juge pertinentes. Conditions

(4) Le commissaire donne par écrit avis de l'ordonnance à l'appelant ainsi qu'aux personnes qui ont reçu l'avis d'appel en vertu du paragraphe 39 (3). Avis de l'ordonnance

44 Le commissaire ne doit pas déléguer son pouvoir d'exiger la présentation ou l'examen du document visé à l'article 8, sauf au commissaire adjoint. Délégation par le commissaire

PARTIE IV

DISPOSITIONS GÉNÉRALES

45 (1) En l'absence de dispositions d'une autre loi ou prises en vertu d'une autre loi concernant des frais ou droits imputables à la personne qui présente une demande d'accès à un document, la personne responsable exige le paiement : Frais

- a) de frais de recherche pour chaque heure de recherche manuelle requise au-delà de deux heures, afin de retrouver un document;
- b) des frais de préparation du document en vue de sa divulgation;
- c) des frais d'ordinateur et autres frais engagés pour le repérage, la récupération, le traitement et la duplication d'un document;
- d) de frais d'expédition.

(2) Malgré le paragraphe (1), la personne responsable n'exige aucun paiement de frais d'un particulier pour l'accès aux renseignements personnels qui le concernent. Exception quant aux renseignements personnels

(3) La personne responsable d'une institution, préalablement à la divulgation d'un document, fournit à l'auteur de la demande une estimation raisonnable de la somme supérieure à 25 \$, exigible, le cas échéant, en vertu de la présente loi. Estimation des frais

(4) Si, de l'avis de la personne responsable, cette mesure s'avère juste et équitable, la personne responsable supprime en totalité ou en partie la somme exigée en vertu de la présente loi, compte tenu : Suppression du paiement des frais

- a) de l'écart entre le coût réel de traitement, de col-

- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

Review

- (5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.

Disposition
of payments

- (6) The costs provided in this section shall be paid and distributed in the manner prescribed by the regulations.

Powers and
duties of
Commis-
sioner**46.** The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed programs of institutions;
- (b) after hearing the head, order an institution to,
 - (i) cease a collection practice that contravenes this Act, and
 - (ii) destroy collections of personal information that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act.

lecte et de duplication du document et la somme exigée aux termes du paragraphe (1);

- b) du fardeau financier éventuellement imposé au destinataire du document;
- c) des effets, favorables ou non, de la diffusion du document sur la santé et la sécurité publiques;
- d) de toute autre question prescrite par les règlements.

(5) La personne à qui sont imputés des frais en vertu du paragraphe (1), peut s'adresser au commissaire afin d'obtenir une révision, soit du montant de ces frais, soit de la décision de la personne responsable de ne pas les supprimer.

Révision

(6) La somme des frais prévus au présent article est versée et répartie de la manière prescrite par les règlements.

Répartition
des frais

46 Le commissaire peut :

Attributions
du commis-
saire

- a) présenter ses commentaires sur l'incidence des projets législatifs ou des programmes gouvernementaux proposés sur la protection de la vie privée;
- b) après avoir entendu la personne responsable, enjoindre à une institution :
 - (i) d'une part, de renoncer à un certain mode de collecte de renseignements qui contrevient à la présente loi,
 - (ii) d'autre part, de disposer des fiches de renseignements personnels qui contreviennent à la présente loi;
- c) dans les cas appropriés, autoriser la collecte de renseignements personnels d'autres sources que du particulier lui-même;
- d) entreprendre ou commander des recherches sur les questions qui ont une incidence sur la réalisation des objets de la présente loi;
- e) instituer à l'intention du public des programmes d'information et fournir des renseignements relatifs à la présente loi ainsi qu'au rôle et aux activités du commissaire;

Regulations

47. The Lieutenant Governor in Council may make regulations,

- (a) respecting the procedures for access to original records under section 23;
- (b) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
- (c) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (d) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (e) prescribing time periods for the purposes of subsection 30 (1);
- (f) prescribing the payment and allocation of fees received under section 45;
- (g) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 45;
- (h) designating any agency, board, commission, corporation or other body as an institution;
- (i) prescribing circumstances under which the notice under subsection 29 (2) is not required;
- (j) prescribing conditions relating to the security and confidentiality of records used for a research purpose;
- (k) prescribing forms and providing for their use;

- f) recevoir les observations du public relativement à l'application de la présente loi.

47 Le lieutenant-gouverneur en conseil peut, par ^{Règlements} règlement :

- a) établir les formalités d'accès aux documents originaux en vertu de l'article 23;
- b) prescrire les circonstances dans lesquelles les documents qui peuvent être constitués à partir de documents lisibles par machine sont soustraits à la définition du terme «document» pour l'application de la présente loi;
- c) exiger des garanties d'ordre administratif, technique et matériel et en fixer les normes, afin d'assurer la protection et le caractère confidentiel de documents et de renseignements personnels dont une institution a le contrôle;
- d) fixer des normes d'exactitude et d'intégralité des renseignements personnels dont une institution a le contrôle;
- e) prescrire les délais pour l'application du paragraphe 30 (1);
- f) prescrire le versement et la répartition des droits perçus en vertu de l'article 45;
- g) prescrire les facteurs à considérer lors de la suppression en totalité ou en partie des frais exigés en vertu de l'article 45;
- h) désigner une entité, notamment un organisme, un conseil, une commission ou une personne morale en tant qu'institution;
- i) prescrire les circonstances dans lesquelles l'avis visé au paragraphe 29 (2) n'est pas requis;
- j) prescrire les conditions relatives à la sécurité et au caractère confidentiel des documents utilisés à des fins de recherche;
- k) prescrire des formules et prévoir les modalités de leur emploi;

- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

Offences

48.—(1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;
- (c) make a request under this Act for access to or correction of personal information under false pretences;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner.

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.

Consent of
Attorney
General

(3) A prosecution shall not be commenced under clause (1) (d), (e) or (f) without the consent of the Attorney General.

Delegation of
head's
powers

49.—(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

Protection
from civil
proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

- l) traiter de toute question que le lieutenant-gouverneur en conseil estime nécessaire pour réaliser efficacement les objets de la présente loi.

48 (1) Nul ne doit :

Infractions

- a) divulguer volontairement des renseignements personnels contrairement à la présente loi;
- b) maintenir volontairement une banque de renseignements personnels contrairement à la présente loi;
- c) appuyer d'une fausse déclaration une demande d'accès à des renseignements personnels ou de rectification de ces derniers présentée en vertu de la présente loi;
- d) entraver volontairement le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- e) faire volontairement une fausse déclaration dans le but d'induire en erreur ou de tenter d'induire en erreur le commissaire dans l'exercice de ses fonctions en vertu de la présente loi;
- f) s'abstenir volontairement de se conformer à une décision du commissaire.

(2) Quiconque contrevient au paragraphe (1), est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$.

Peine

(3) Aucune poursuite en application de l'alinéa (1) d), e) ou f) ne doit être intentée sans le consentement du procureur général.

Consentement
du procureur
général

49 (1) Sous réserve des limitations, restrictions, conditions et exigences qu'elle énonce dans le mandat, la personne responsable peut, par écrit, déléguer tout ou partie de ses attributions à un ou plusieurs dirigeants de l'institution.

Délégation
des attribu-
tions de la
personne
responsable

(2) Sont irrecevables les actions ou autres instances intentées contre la personne responsable ou la personne qui agit pour son compte ou sous son autorité pour un préjudice subi par suite de la divulgation ou de la non-divulgation de bonne foi de la totalité ou d'une partie d'un document qui fait l'objet d'une demande en vertu de la présente loi ou de l'omission de donner l'avis requis en vertu de celle-ci, si des efforts raisonnables ont été faits pour donner l'avis.

Immunité

Vicarious
liability of
institutions
preserved

(3) Subsection (2) does not relieve an institution from liability in respect of a tort committed by a head or a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Oral requests

50.—(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

Pre-existing
access
preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this Act comes into force.

Information
otherwise
available

51.—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Powers of
courts and
tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Application
of Act

52.—(1) This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.

Non-
application of
Act

(2) This Act does not apply to records placed in the archives of an institution by or on behalf of a person or organization other than the institution.

Other Acts

53.—(1) This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

Idem

(2) The following confidentiality provisions prevail over this Act:

R.S.O. 1980,
c. 308

1. Section 90 of the *Municipal Elections Act*.

R.S.O. 1980,
c. 31

2. Subsection 57 (1) of the *Assessment Act*.

(3) Le paragraphe (2) ne dégage pas l'institution de la responsabilité qu'elle serait autrement tenue d'assumer à l'égard d'un délit civil commis par une personne responsable ou une personne visée au paragraphe (2).

Certaines institutions restent responsables du fait d'autrui

50 (1) Si une personne responsable, aux termes de la présente loi, peut donner accès à des renseignements, la présente loi n'a pas pour effet d'empêcher cette personne d'y donner accès en réponse à une demande verbale ou en l'absence d'une demande quelconque.

Demandes verbales

(2) La présente loi ne peut être invoquée pour interdire l'accès à des renseignements qui ne sont pas personnels et auxquels le public avait accès immédiatement avant l'entrée en vigueur de la présente loi, en vertu d'une loi, d'une coutume ou d'un usage établis.

Conservation du droit d'accès déjà existant

51 (1) La présente loi ne fixe aucune limite aux renseignements par ailleurs mis à la disposition d'une partie à un litige en vertu de la loi.

Renseignements disponibles par ailleurs

(2) La présente loi n'a pas d'incidence sur le pouvoir que possède un tribunal judiciaire ou administratif de contraindre un témoin à témoigner ou d'ordonner la production d'un écrit.

Pouvoirs des tribunaux judiciaires et administratifs

52 (1) La présente loi s'applique à tout document dont une institution a la garde ou le contrôle, que ce document ait été consigné avant ou après l'entrée en vigueur de la présente loi.

Champ d'application de la présente loi

(2) La présente loi ne s'applique pas aux documents déposés aux archives d'une institution par une personne ou par une organisation autre que l'institution, ou pour leur compte.

Cas de non-application de la loi

53 (1) La présente loi l'emporte sur une disposition ayant trait au caractère confidentiel qui figure dans toute autre loi, sauf disposition contraire dans cette autre loi ou dans la présente loi.

Autres lois

(2) Les dispositions suivantes qui ont trait au caractère confidentiel l'emportent sur la présente loi :

Idem

1. L'article 90 de la *Loi sur les élections municipales*.

L.R.O. 1980, chap. 308

2. Le paragraphe 57 (1) de la *Loi sur l'évaluation foncière*.

L.R.O. 1980, chap. 31

Exercise of
rights of
deceased,
etc., persons

54. Any right or power conferred on an individual by this Act may be exercised,

- (a) if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (b) if a committee has been appointed for the individual or if the Public Trustee has become the individual's committee, by the committee; and
- (c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

Review of
this Act

55. The Standing Committee on the Legislative Assembly shall, before the 1st day of January, 1994, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.

Commence-
ment

56. This Act comes into force on the 1st day of January, 1991.

Short title

57. The short title of this Act is the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

54 Les droits et pouvoirs conférés à un particulier par la présente loi peuvent être exercés par :

Exercice des droits au nom de la personne décédée ou incapable

- a) son représentant successoral, dans le cas du particulier décédé, si l'exercice de ce droit ou du pouvoir est relié à l'administration de sa succession;
- b) le curateur aux biens ou à la personne de ce particulier ou par le Curateur public, si ce dernier assume cette fonction;
- c) la personne qui a la garde légitime du particulier, si celui-ci est âgé de moins de seize ans.

55 Le Comité permanent de l'Assemblée législative doit entreprendre un examen global de la présente loi avant le 1^{er} janvier 1994 et faire ses recommandations à l'Assemblée législative sur les modifications à apporter à la présente loi dans l'année qui suit le début de cet examen.

Examen de la présente loi

56 La présente loi entre en vigueur le 1^{er} janvier 1991.

Entrée en vigueur

57 Le titre abrégé de la présente loi est *Loi de 1989 sur l'accès à l'information municipale et la protection de la vie privée*.

Titre abrégé

CA20N
XB
Bill 50 - B56

Private Member's Bill

2ND SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

Bill 50

An Act to provide for Community Mental Health Services

Mr. Reville



1st Reading December 1st, 1987

2nd Reading

3rd Reading

Royal Assent

*Continued from the 1st Session by an Order of the
Legislative Assembly of March 2nd, 1989.*

EXPLANATORY NOTE

The Bill allows the Minister to establish and maintain systems of community mental health services which follow certain comprehensive principles and which may include certain comprehensive components.

Bill 50**1989**

**An Act to provide for
Community Mental Health Services**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Minister” means the Minister of Health;

“psychiatrist” means a physician who holds a specialist’s certificate in psychiatry issued by The Royal College of Physicians and Surgeons of Canada or equivalent qualification acceptable to the Minister;

“regulations” means the regulations made under this Act.

2. The Minister may establish and maintain a system of community mental health services in accordance with the following principles:

Community
health
services

1. The planning, arrangement and delivery of support to each person shall be determined by the particular needs of the person.
2. Each person who is to be provided with such services shall be encouraged to participate in planning the person’s treatment and service plan.
3. The system shall respond to the individual as a whole person, delivering the necessary type and degree of support without regard to age or degree of disability.
4. Each person shall be considered to be entitled to live and receive age-appropriate services in the least restrictive setting consistent with the person’s needs, potential and abilities.

5. The system shall give to each person the maximum opportunity to participate in the mainstream of community life.
6. The system shall monitor and flexibly adjust the supports and services it provides in order to remain appropriate and responsive to each person served by the system as the person's needs change.
7. The treatment and service plan for each person served by the system shall be reviewed at least annually.
8. The system shall have defined geographic areas and the existing and newly-developed resources and supports and services shall be co-ordinated in the manner that most effectively meets the needs of the persons served by the system in each such area.
9. The system shall be designed to encourage each person served by the system to acquire the skills necessary to live, work and function in the community.
10. The responsibility for planning, development, co-ordination and delivery of the services in each geographic area shall be delegated to a specific authority.
11. The system shall co-operate with advocacy bodies that are free from conflict of interest and are intended to assist persons served by the system to enforce their rights.

Components

3. The community mental health service may include the following components:

1. Community housing services, including a range of supportive housing, approved homes, homes for special care and services to residents in designated boarding homes.
2. Psychosocial services, including rehabilitation assessment, case management, social skills training, social therapeutic clubs, social network therapy, self-help groups, vocational and educational services including supportive work programs, financial services and family services.

3. Medical and psychiatric services, including access to family physicians, psychiatrists, crisis centres, brief and partial hospitalization, home treatment and regional hospitalization.
4. Co-ordination, including local offices or agencies to co-ordinate the planning and delivery of mental health services within each geographic area and encouragement of collaboration among service providers.
5. Advocacy services to assist persons served by the system in enforcing their rights in psychiatric hospitals, homes for special care, general hospital psychiatric units, nursing homes and community mental health facilities.

4. The Lieutenant Governor in Council may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. Regulations

5. This Act comes into force on the day it receives Royal Assent. Commence-
ment

6. The short title of this Act is the *Community Mental Health Services Act, 1989*. Short title

Bill 51

An Act to amend the Landlord and Tenant Act

Mr. Kanter

1st Reading July 20th, 1989
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The proposed amendment to the *Landlord and Tenant Act* will enable a residential tenant to keep a pet in his or her rented premises despite any term of a tenancy agreement unless the pet has caused a substantial nuisance to the person or property of the landlord or other tenants.

Bill 51

1989

An Act to amend the Landlord and Tenant Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 109 of the *Landlord and Tenant Act*, being chapter 232 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(5a) Notwithstanding any provision of a tenancy agreement, if an application brought by a landlord under subsection (3) or (4) for a writ of possession is based on a tenant's possession of a household pet, the judge hearing the application shall not direct the issue of the writ on that ground unless the judge is satisfied that the pet has caused a substantial nuisance to the person or property of the landlord or other tenants. Pets

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Landlord and Tenant Amendment Act, 1989*. Short title

Bill 52

An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989

The Hon. M. Elston

Chairman of the Management Board of Cabinet



1st Reading July 20th, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill makes amendments to the *Freedom of Information and Protection of Privacy Act, 1987* and several other statutes. The amendments are required as a result of the new *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

Bill 52**1989**

**An Act to amend certain Statutes of Ontario
Consequent upon Enactment of the
Municipal Freedom of Information and
Protection of Privacy Act, 1989**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 20 (1) of the *County of Oxford Act*, being chapter 365 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 66, section 3, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 19 and the minutes and proceedings of any committee of the County Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the County, to any applicant on payment at such rate as the County Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

2. Subsection 17 (1) of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 65, section 2, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 16 and the minutes and proceedings of any committee of the District Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the District Corporation, to any applicant on payment at such rate as the District Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

3.—(1) Clause (b) in the definition of “institution” in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act, 1987*, being chapter 25, is repealed.

(2) The definition of “personal information bank” in subsection 2 (1) of the said Act is repealed and the following substituted therefor:

“personal information bank” means a collection of personal information that is organized and capable of being retrieved using an individual’s name or an identifying number or particular assigned to the individual.

(3) Subsections 2 (3), (4) and (5) of the said Act are repealed.

(4) Subsection 4 (1) of the said Act is amended by inserting after “this” in the third line “or any other”.

(5) Subsection 4 (4) of the said Act is repealed and the following substituted therefor:

Assistant
Commissioners

(4) The Commissioner shall appoint one or two officers of his or her staff to be Assistant Commissioners.

(6) Subsection 18 (1) of the said Act is amended by adding thereto the following clause:

(h) questions that are to be used in an examination or test for an educational purpose.

(7) The said subsection 18 (1) is further amended by adding thereto the following clause:

1981, c. 70

(i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

(8) Subclause 21 (1) (e)(iii) of the said Act is repealed and the following substituted therefor:

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

(9) Section 25 of the said Act is amended by adding thereto the following subsection:

(5) In this section, “institution” includes an institution as defined in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. Institution
1989, c. ...

(10) Clause 27 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

(11) Clause 29 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or

.

(12) Clause 34 (2) (c) of the said Act is repealed.

(13) Clause 39 (1) (b) of the said Act is amended by adding at the end thereof “or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.

(14) Subsection 40 (3) of the said Act is repealed and the following substituted therefor:

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes. Exception

(15) Subsection 40 (4) of the said Act is repealed and the following substituted therefor:

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations. Disposal of
personal
information

(16) Clause 41 (c) of the said Act is amended by adding at the end thereof “or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.

(17) Clauses 42 (l), (m), (q) and (r) of the said Act are repealed.

(18) Clauses 45 (d), (e), (f), (g) and (h) of the said Act are repealed and the following substituted therefor:

- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

(19) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

Inconsistent
use or
disclosure

(1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 45 (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 45 (e).

(20) Subsection 50 (4) of the said Act is amended by inserting after “Act” in the second line and in the fourth line in each instance “or the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.

(21) Subsection 55 (1) of the said Act is amended by inserting after “this” in the fourth line “or any other”.

(22) Subsection 55 (2) of the said Act is amended by inserting after “this” in the fifth line “or any other”.

(23) Subsection 55 (3) of the said Act is amended by inserting after “this” in the sixth line “or any other”.

(24) Subsection 56 (2) of the said Act is amended by striking out “the Assistant Information Commissioner or the Assistant Privacy Commissioner” in the second and third lines and inserting in lieu thereof “an Assistant Commissioner”.

(25) Subsection 57 (1) of the said Act is amended by striking out “may” in the second line and inserting in lieu thereof “shall” and by striking out “or for correction of a record” in the third and fourth lines.

(26) Section 57 of the said Act is amended by adding thereto the following subsection:

(1a) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information. Exception, personal information

(27) Subsection 57 (3) of the said Act is amended by striking out “may” in the first line and inserting in lieu thereof “shall”.

(28) Clause 57 (3) (d) of the said Act is repealed.

(29) Subsection 57 (4) of the said Act is repealed and the following substituted therefor:

(4) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head’s decision not to waive the fee. Review

(30) Subsection 58 (2) of the said Act is repealed and the following substituted therefor:

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act and the *Municipal Freedom of Information and Protection of Privacy Act, 1989* in providing access to information and protection of personal privacy including, Contents of report
1989, c. ...

- (a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50 (1) of this Act and under subsection 39 (1) of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*;
- (b) an assessment of the extent to which institutions are complying with this Act and the *Municipal Freedom of Information and Protection of Privacy Act, 1989*; and
- (c) the Commissioner’s recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act, the *Municipal Freedom of Information and Protection of Privacy Act, 1989* and the regulations under them.

(31) Section 60 of the said Act is amended by adding thereto the following clause:

- (ia) prescribing conditions relating to the security and confidentiality of records used for a research purpose.

4. Subsection 78 (1) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 77 and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the corporation of the municipality, to any applicant on payment at such rate as the council may by by-law establish.

5. Subsection 19 (1) of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 2, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

6. Subsection 19 (1) of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 9, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a

reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

7. Subsection 19 (1) of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 15, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

8. Subsection 18 (1) of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 21, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

9. Subsection 18 (1) of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 28, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the officer appointed under section 17, and the officer shall, within a reasonable time, furnish copies

Inspection
and copying
of minutes,
etc.

of them, certified under the officer's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

10. Subsection 22 (1) of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 21 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

11. Subsection 19 (1) of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 38, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

12. Subsection 18 (1) of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 44, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any

applicant on payment at such rate as the Regional Council may by by-law establish.

13. Subsection 18 (1) of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 52, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

14. Subsection 18 (1) of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 57, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the officer appointed under section 17, and the officer shall, within a reasonable time, furnish copies of them, certified under the officer's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

15.—(1) This Act, except subsection 3 (7), comes into force on the 1st day of January, 1991.

Commence-
ment

(2) Subsection 3 (7) of this Act shall be deemed to have come into force on the 1st day of August, 1989.

Idem

16. The short title of this Act is the *Municipal Freedom of Information Statute Law Amendment Act, 1989*.

Short title

Bill 52

(Chapter 64
Statutes of Ontario, 1989)

An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989

The Hon. M. Elston

Chairman of the Management Board of Cabinet



<i>1st Reading</i>	July 20th, 1989
<i>2nd Reading</i>	October 10th, 1989
<i>3rd Reading</i>	December 14th, 1989
<i>Royal Assent</i>	December 14th, 1989

Bill 52

1989

**An Act to amend certain Statutes of Ontario
Consequent upon Enactment of the
Municipal Freedom of Information and
Protection of Privacy Act, 1989**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 20 (1) of the *County of Oxford Act*, being chapter 365 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 66, section 3, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 19 and the minutes and proceedings of any committee of the County Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the County, to any applicant on payment at such rate as the County Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

2. Subsection 17 (1) of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 65, section 2, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 16 and the minutes and proceedings of any committee of the District Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the District Corporation, to any applicant on payment at such rate as the District Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

3.—(1) Clause (b) in the definition of “institution” in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act, 1987*, being chapter 25, is repealed.

(2) The definition of “personal information bank” in subsection 2 (1) of the said Act is repealed and the following substituted therefor:

“personal information bank” means a collection of personal information that is organized and capable of being retrieved using an individual’s name or an identifying number or particular assigned to the individual.

(3) Subsections 2 (3), (4) and (5) of the said Act are repealed.

(4) Subsection 4 (1) of the said Act is amended by inserting after “this” in the third line “or any other”.

(5) Subsection 4 (4) of the said Act is repealed and the following substituted therefor:

Assistant
Commissioners

(4) The Commissioner shall appoint one or two officers of his or her staff to be Assistant Commissioners.

(6) Subsection 18 (1) of the said Act is amended by adding thereto the following clause:

(h) questions that are to be used in an examination or test for an educational purpose.

(7) The said subsection 18 (1) is further amended by adding thereto the following clause:

1981, c. 70

(i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

(8) Subclause 21 (1) (e)(iii) of the said Act is repealed and the following substituted therefor:

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

(9) Section 25 of the said Act is amended by adding thereto the following subsection:

(5) In this section, “institution” includes an institution as defined in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. Institution
1989, c. 63

(10) Clause 27 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

(11) Clause 29 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or

.

(12) Clause 34 (2) (c) of the said Act is repealed.

(13) Clause 39 (1) (b) of the said Act is amended by adding at the end thereof “or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.

(14) Subsection 40 (3) of the said Act is repealed and the following substituted therefor:

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes. Exception

(15) Subsection 40 (4) of the said Act is repealed and the following substituted therefor:

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations. Disposal of
personal
information

(16) Clause 41 (c) of the said Act is amended by adding at the end thereof “or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.

(17) Clauses 42 (l), (m), (q) and (r) of the said Act are repealed.

(18) Clauses 45 (d), (e), (f), (g) and (h) of the said Act are repealed and the following substituted therefor:

- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

(19) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

Inconsistent
use or
disclosure

(1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 45 (d); and
- (b) a record of any disclosure of that personal information to a person other than a person described in clause 45 (e).

(20) Subsection 50 (4) of the said Act is amended by inserting after “Act” in the second line and in the fourth line in each instance “or the *Municipal Freedom of Information and Protection of Privacy Act, 1989*”.

(21) Subsection 55 (1) of the said Act is amended by inserting after “this” in the fourth line “or any other”.

(22) Subsection 55 (2) of the said Act is amended by inserting after “this” in the fifth line “or any other”.

(23) Subsection 55 (3) of the said Act is amended by inserting after “this” in the sixth line “or any other”.

(24) Subsection 56 (2) of the said Act is amended by striking out “the Assistant Information Commissioner or the Assistant Privacy Commissioner” in the second and third lines and inserting in lieu thereof “an Assistant Commissioner”.

(25) Subsection 57 (1) of the said Act is amended by striking out “may” in the second line and inserting in lieu thereof “shall” and by striking out “or for correction of a record” in the third and fourth lines.

(26) Section 57 of the said Act is amended by adding thereto the following subsection:

(1a) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information. Exception,
personal
information

(27) Subsection 57 (3) of the said Act is amended by striking out “may” in the first line and inserting in lieu thereof “shall”.

(28) Clause 57 (3) (d) of the said Act is repealed.

(29) Subsection 57 (4) of the said Act is repealed and the following substituted therefor:

(4) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee. Review

(30) Subsection 58 (2) of the said Act is repealed and the following substituted therefor:

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act and the *Municipal Freedom of Information and Protection of Privacy Act, 1989* in providing access to information and protection of personal privacy including, Contents of
report
1989, c. 63

- (a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50 (1) of this Act and under subsection 39 (1) of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*;
- (b) an assessment of the extent to which institutions are complying with this Act and the *Municipal Freedom of Information and Protection of Privacy Act, 1989*; and
- (c) the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act, the *Municipal Freedom of Information and Protection of Privacy Act, 1989* and the regulations under them.

(31) Section 60 of the said Act is amended by adding thereto the following clause:

- (ia) prescribing conditions relating to the security and confidentiality of records used for a research purpose.

4. Subsection 78 (1) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 77 and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the corporation of the municipality, to any applicant on payment at such rate as the council may by by-law establish.

5. Subsection 19 (1) of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 2, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

6. Subsection 19 (1) of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 9, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a

reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

7. Subsection 19 (1) of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 15, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

8. Subsection 18 (1) of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 21, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

9. Subsection 18 (1) of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 28, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the officer appointed under section 17, and the officer shall, within a reasonable time, furnish copies

Inspection
and copying
of minutes,
etc.

of them, certified under the officer's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

10. Subsection 22 (1) of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 21 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

11. Subsection 19 (1) of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 38, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 18 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

12. Subsection 18 (1) of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 44, is repealed and the following substituted therefor:

Inspection
and copying
of minutes,
etc.

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any

applicant on payment at such rate as the Regional Council may by by-law establish.

13. Subsection 18 (1) of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 52, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

14. Subsection 18 (1) of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 72, section 57, is repealed and the following substituted therefor:

(1) Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 17 and the minutes and proceedings of any committee of the Regional Council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the officer appointed under section 17, and the officer shall, within a reasonable time, furnish copies of them, certified under the officer's hand and the seal of the Regional Corporation, to any applicant on payment at such rate as the Regional Council may by by-law establish.

Inspection
and copying
of minutes,
etc.

15.—(1) This Act, except subsection 3 (7), comes into force on the 1st day of January, 1991.

Commence-
ment

(2) Subsection 3 (7) shall be deemed to have come into force on the 1st day of August, 1989.

Idem

16. The short title of this Act is the *Municipal Freedom of Information Statute Law Amendment Act, 1989*.

Short title

Bill 53

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. J. Eakins
Minister of Municipal Affairs



1st Reading July 20th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTION 1. Subsection 21 (3) of the Act is repealed as it is now dealt with under the *Municipal Conflict of Interest Act, 1983*.

SECTION 2. The proposed amendment would allow Metropolitan Council to contribute towards the cost of pollution control projects undertaken by an area municipality.

SECTION 3. The proposed amendment would enable fees to be charged to area municipalities that utilize metropolitan land for waste disposal.

SECTION 4. The proposed section 66a would permit the Metropolitan Council to make grants for waste recycling projects.

SECTION 5. The proposed amendment vests in the Metropolitan Corporation the title to the original roads in the metropolitan road system established by by-law of Metropolitan Council in 1953.

SECTION 6. Self-explanatory.

SECTION 7. Currently, the Toronto Transit Commission is composed of five members appointed by Metropolitan Council. The proposed amendment would allow the Council to determine the number of members.

SECTIONS 8 to 11. The proposed amendments relate to the powers and duties of the Metropolitan Library Board. The *Public Libraries Act, 1984* repealed the former *Public Libraries Act* and the powers of the Metropolitan Toronto Library Board were not included in the new Act.

SECTION 12. The proposed amendment would transfer certain provincially-owned lands in the Town of Vaughan and the City of Brampton to the City of Etobicoke to accommodate the re-alignment of a road.

SECTION 13. The proposed amendment would change the term “councillors” to “members” in reference to members of council of an area municipality. The Borough of East York is given the power to change the title of their members of council to alderman or councillor in the same manner as city municipalities may do.

SECTION 14. This amendment repeals a provision made redundant by the repeal of the *Juvenile Delinquents Act (Canada)*.

SECTION 15. The proposed amendment would remove the ten-year limitation on the right to sell refreshments and liquor in metropolitan parks.

SECTION 16. Under subsection 149 (2) of the *Municipal Act*, Ontario Municipal Board approval is not required for certain undertakings unless debentures are being issued. The same provision is being made applicable to the Metropolitan Corporation.

SECTION 17. The proposed amendment would allow the Metropolitan Corporation to determine the number of members of the sinking fund committee. A majority of members would constitute a quorum of the committee.

SECTION 18.—Subsection 1. The proposed amendment would make section 112 of the *Municipal Act* (which prohibits councils from assisting business ventures) applicable to the Metropolitan Council.

Subsection 2. The proposed subsection 245 (6a) requires the Metropolitan Council to appoint a metropolitan fire co-ordinator and authorizes the spending of sums to establish an emergency fire service plan.

Bill 53

1989

An Act to amend the Municipality of Metropolitan Toronto Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 21 (3) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed.

2. Section 62 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 18, section 8, is repealed and the following substituted therefor:

62. The Metropolitan Council may contribute toward the cost to any area municipality of,

Contribution
towards cost
of pollution
control
projects

- (a) the separation of sanitary and storm sewers in the area municipality; and
- (b) other water pollution control projects undertaken by the area municipality.

3. Subsection 66 (2) of the said Act is amended by striking out at the end thereof “but no such fees shall be charged to any area municipality or its agent”.

4. Part V of the said Act is amended by adding thereto the following section:

66a.—(1) In this section, “waste” means waste as defined in section 66.

Definition

(2) The Metropolitan Council may make grants, on such terms as it considers expedient, to an area municipality, except a local board, for the establishment or operation of a program of the area municipality for the separation of waste at the source of collection or for the reduction, recovery, recycling or reuse of waste.

Grants for
waste
recycling
programs

5. Section 70 of the said Act is amended by adding thereto the following subsection:

Deeming
provision

(4a) The soil and freehold of all roads designated to be assumed as metropolitan roads in a by-law passed under subsection (1) and approved by the Lieutenant Governor in Council under subsection (4) shall be deemed to have vested in the Metropolitan Corporation on the 1st day of January, 1954.

6. Section 76 of the said Act is amended by adding thereto the following subsection:

Agreements
respecting
bridges

(3) The Metropolitan Corporation and an area municipality may enter into agreements for sharing the costs of maintaining and repairing a bridge carrying a road that is not a metropolitan road over or under a metropolitan road.

7.—(1) Subsection 100 (1) of the said Act is repealed and the following substituted therefor:

Corporation
members

(1) The Commission is a body corporate and shall consist of such number of members appointed by by-law of the Metropolitan Council, as the Council considers appropriate.

(2) Subsection 100 (4) of the said Act is repealed.

8. Section 147 of the said Act is amended by adding thereto the following clause:

(c) “Minister” means the Minister of Culture and Communications.

9.—(1) Subsection 148 (1) of the said Act is amended by striking out “The regional library board, which is a corporation, under the name of” in the first and second lines and inserting in lieu thereof “The corporation known as the”.

(2) Subsections 148 (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Time of
appointment

(2) Appointments of members of the Library Board shall be made in the month of December in every year in which a regular election is held for the metropolitan councillors.

Term of
office

(3) Members appointed under subsection (2) shall hold office for a three-year term, commencing on the 1st day of January after they are appointed and may be reappointed.

(3) Subsection 148 (7) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 57, section 44, is repealed and the following substituted therefor:

(7) In the absence of the chairman or the vice-chairman, if any, the Library Board may appoint one of its members as acting chairman.

Acting
chairmen

10.—(1) Subsection 149 (2) of the said Act is repealed.

(2) Section 149 of the said Act is amended by adding thereto the following subsection:

(9) The Library Board has, and since the 23rd day of August, 1977 shall be deemed to have had, the power to maintain the personal property known as the John Ross Robertson Collection in such building of the Library Board as the Library Board considers appropriate.

John Ross
Robertson
Collection

11. Part IX of the said Act is amended by adding thereto the following sections:

149a.—(1) The primary functions of the Library Board are in co-operation with the area and other library boards,

Primary
functions of
Library
Board

(a) to provide a reference and research service that reflects the Metropolitan Area's unique needs; and

(b) to supplement the public services provided by the area boards.

(2) For the purposes of clause (1) (b), and for the purposes of provision by the Library Board of library resources and services to the Ontario library community, the Library Board shall be deemed to be a special library service board within the meaning of section 40 of the *Public Libraries Act, 1984*, but subsection 42 (2) of that Act shall not apply to the Library Board.

Deeming
provision

1984, c. 57

(3) The Minister may make grants to the Library Board under subsection 40 (1) of the *Public Libraries Act, 1984* for the purposes of the functions described in clauses (1) (a) and (b) and for any other resources and services specified by the Minister to be provided by the Library Board in its capacity as a special library service board.

Grants

(4) The Library Board,

Powers and
duties of
Library
Board

- (a) shall maintain a comprehensive collection of books, periodicals, films and other material for the purposes of clause (1) (a);
- (b) may operate a book-information service and an inter-library book-loan service for its own collections and those of the area boards;
- (c) may operate a circulating service for any part of its collections; and
- (d) may provide such other services as it considers necessary for a comprehensive and efficient library service within the Metropolitan Area.

Application
of
1984, c. 57

149b.—(1) Clauses 10 (1) (a), (b) and (d), sections 11, 12, 13, 15, 16, 17 and 18, clauses 20 (b) to (h), sections 22, 23 and 28, subsection 35 (1) and section 37 of the *Public Libraries Act, 1984* apply with necessary modifications to the Library Board.

Idem

(2) For the purposes of clause 10 (1) (d) of the *Public Libraries Act, 1984*, any employee of any of the appointing bodies referred to in subsection 148 (1) shall be deemed to be an employee of the Metropolitan Corporation.

Idem

(3) For the purposes of clause 13 (d) of the *Public Libraries Act, 1984*, the reference therein to clause 10 (1) (c) shall be deemed to be a reference to the membership and residential requirements of clauses 148 (1) (a), (c), (d) and (e) of this Act.

Idem

(4) For the purposes of subsection 22 (1) of the *Public Libraries Act, 1984*, the Metropolitan Council shall be deemed to be the sole appointing council.

12. Section 150 of the said Act is amended by adding thereto the following subsection:

Annexation

(2a) On the 1st day of January, 1989,

- (a) that portion of the City of Brampton described as follows is annexed to The Corporation of the City of Etobicoke:

Parts 1, 2, 3, 4, 5 and 6 on a plan deposited in the Land Registry Office for the Registry Division of Peel (No. 43) as Plan 43R-10527; and

- (b) that portion of the Town of Vaughan described as follows is annexed to The Corporation of the City of Etobicoke:

Parts 1, 2 and 3 on a plan deposited in the Land Registry Office for the Registry Division of York Region (No. 65) as 65R-4820, Parts 1, 2, 3, 4, 5 and 6 on a plan deposited in the said Land Registry Office as 65R-4821, Parts 1 and 2 on a plan deposited in the said Land Registry Office as 65R-5681 and Parts 1, 2, 3, 4, 5, 6, 7, 8 and 11 on a plan deposited in the said Land Registry Office as 65R-8430.

13.—(1) Clause 152 (1) (a) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 19, section 10, is amended by striking out “councillors” in the second line and inserting in lieu thereof “members”.

(2) Clause 152 (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 19, section 10, is amended by striking out “councillors” in the second line and inserting in lieu thereof “members”.

(3) Section 152 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 19, section 10, is further amended by adding thereto the following subsection:

(4) The Borough of East York shall be deemed to be a city municipality for the purposes of subsections 30 (8), (9), (10) and (11) of the *Municipal Act*.

Deeming provision, title of members of council
R.S.O. 1980, c. 302

14. Section 166 of the said Act is repealed.

15.—(1) Subsection 206 (2) of the said Act is repealed and the following substituted therefor:

(2) In addition to the powers that may be exercised under subsection (1), the Metropolitan Council has power, subject to the *Community Recreation Centres Act*, to let, for such period as it considers advisable, the right to sell refreshments and, subject to the *Liquor Licence Act* and the regulations made thereunder, spirituous, fermented or intoxicating liquors within the metropolitan parks under such conditions as the Metropolitan Council may prescribe.

Sale of liquor in parks
R.S.O. 1980, cc. 80, 244

(2) Clause 206 (5) (a) of the said Act is repealed and the following substituted therefor:

- (a) exercise all or any of the powers conferred on it under subsections (1) and (2) in respect of such lands.

16. Section 224 of the said Act is amended by adding thereto the following subsection:

R.S.O. 1980,
c. 302,
s. 149 (2)
applies

(4) Subsection 149 (2) of the *Municipal Act* applies with necessary modifications to the Metropolitan Corporation.

17.—(1) Subsection 227 (24) of the said Act is amended by striking out “two members appointed by the Metropolitan Council, and the two” in the third and fourth lines and inserting in lieu thereof “such other members appointed by the Metropolitan Council as it considers appropriate and the”.

(2) Subsection 227 (28) of the said Act is amended by striking out “Two” in the first line and inserting in lieu thereof “A majority of”.

18.—(1) Subsection 245 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 17 and amended by the Statutes of Ontario, 1988, chapter 19, section 13 and 1988, chapter 31, section 19, is further amended by inserting after “106” in the second line “112”.

(2) Section 245 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 18, section 17, 1988, chapter 19, section 13 and 1988, chapter 31, section 19, is further amended by adding thereto the following subsection:

Fire co-
ordinator

(6a) The Metropolitan Council shall appoint a metropolitan fire co-ordinator who shall be responsible for the establishment of an emergency fire service plan for the Metropolitan Area, and the Metropolitan Corporation may spend such sums as it considers necessary to implement the plan.

Transition

19. Despite the re-enactment of subsections 148 (2) and (3) of the *Municipality of Metropolitan Toronto Act* by subsection 9 (2) of this Act, members of the Metropolitan Toronto Library Board in office on the day this Act comes into force continue in office until the 31st day of December, 1991.

Commence-
ment

20.—(1) This Act, except section 12, comes into force on the day it receives Royal Assent.

(2) Section 12 shall be deemed to have come into force on Idem the 1st day of January, 1989.

21. The short title of this Act is the *Municipality of Metro-* Short title
politan Toronto Amendment Act, 1989.

Bill 53

(Chapter 78
Statutes of Ontario, 1989)

An Act to amend the Municipality of Metropolitan Toronto Act

The Hon. J. Sweeney
Minister of Municipal Affairs



<i>1st Reading</i>	July 20th, 1989
<i>2nd Reading</i>	December 14th, 1989
<i>3rd Reading</i>	December 19th, 1989
<i>Royal Assent</i>	December 19th, 1989

Bill 53

1989

An Act to amend the Municipality of Metropolitan Toronto Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 21 (3) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed.

2. Section 62 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 18, section 8, is repealed and the following substituted therefor:

62. The Metropolitan Council may contribute toward the cost to any area municipality of,

Contribution
towards cost
of pollution
control
projects

- (a) the separation of sanitary and storm sewers in the area municipality; and
- (b) other water pollution control projects undertaken by the area municipality.

3. Subsection 66 (2) of the said Act is amended by striking out at the end thereof “but no such fees shall be charged to any area municipality or its agent”.

4. Part V of the said Act is amended by adding thereto the following section:

66a.—(1) In this section, “waste” means waste as defined in section 66.

Definition

(2) The Metropolitan Council may make grants, on such terms as it considers expedient, to an area municipality, except a local board, for the establishment or operation of a program of the area municipality for the separation of waste at the source of collection or for the reduction, recovery, recycling or reuse of waste.

Grants for
waste
recycling
programs

5. Section 70 of the said Act is amended by adding thereto the following subsection:

Deeming
provision

(4a) The soil and freehold of all roads designated to be assumed as metropolitan roads in a by-law passed under subsection (1) and approved by the Lieutenant Governor in Council under subsection (4) shall be deemed to have vested in the Metropolitan Corporation on the 1st day of January, 1954.

6. Section 76 of the said Act is amended by adding thereto the following subsection:

Agreements
respecting
bridges

(3) The Metropolitan Corporation and an area municipality may enter into agreements for sharing the costs of maintaining and repairing a bridge carrying a road that is not a metropolitan road over or under a metropolitan road.

7.—(1) Subsection 100 (1) of the said Act is repealed and the following substituted therefor:

Corporation
members

(1) The Commission is a body corporate and shall consist of such number of members appointed by by-law of the Metropolitan Council, as the Council considers appropriate.

(2) Subsection 100 (4) of the said Act is repealed.

8. Section 147 of the said Act is amended by adding thereto the following clause:

(c) “Minister” means the Minister of Culture and Communications.

9.—(1) Subsection 148 (1) of the said Act is amended by striking out “The regional library board, which is a corporation, under the name of” in the first and second lines and inserting in lieu thereof “The corporation known as the”.

(2) Subsections 148 (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Time of
appointment

(2) Appointments of members of the Library Board shall be made in the month of December in every year in which a regular election is held for the metropolitan councillors.

Term of
office

(3) Members appointed under subsection (2) shall hold office for a three-year term, commencing on the 1st day of January after they are appointed and may be reappointed.

(3) Subsection 148 (7) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 57, section 44, is repealed and the following substituted therefor:

(7) In the absence of the chairman or the vice-chairman, if any, the Library Board may appoint one of its members as acting chairman.

Acting
chairmen

10.—(1) Subsection 149 (2) of the said Act is repealed.

(2) Section 149 of the said Act is amended by adding thereto the following subsection:

(9) The Library Board has, and since the 23rd day of August, 1977 shall be deemed to have had, the power to maintain the personal property known as the John Ross Robertson Collection in such building of the Library Board as the Library Board considers appropriate.

John Ross
Robertson
Collection

11. Part IX of the said Act is amended by adding thereto the following sections:

149a.—(1) The primary functions of the Library Board are in co-operation with the area and other library boards,

Primary
functions of
Library
Board

(a) to provide a reference and research service that reflects the Metropolitan Area's unique needs; and

(b) to supplement the public services provided by the area boards.

(2) For the purposes of clause (1) (b), and for the purposes of provision by the Library Board of library resources and services to the Ontario library community, the Library Board shall be deemed to be a special library service board within the meaning of section 40 of the *Public Libraries Act, 1984*, but subsection 42 (2) of that Act shall not apply to the Library Board.

Deeming
provision

1984, c. 57

(3) The Minister may make grants to the Library Board under subsection 40 (1) of the *Public Libraries Act, 1984* for the purposes of the functions described in clauses (1) (a) and (b) and for any other resources and services specified by the Minister to be provided by the Library Board in its capacity as a special library service board.

Grants

(4) The Library Board,

Powers and
duties of
Library
Board

- (a) shall maintain a comprehensive collection of books, periodicals, films and other material for the purposes of clause (1) (a);
- (b) may operate a book-information service and an inter-library book-loan service for its own collections and those of the area boards;
- (c) may operate a circulating service for any part of its collections; and
- (d) may provide such other services as it considers necessary for a comprehensive and efficient library service within the Metropolitan Area.

Application
of
1984, c. 57

149b.—(1) Clauses 10 (1) (a), (b) and (d), sections 11, 12, 13, 15, 16, 17 and 18, clauses 20 (b) to (h), sections 22, 23 and 28, subsection 35 (1) and section 37 of the *Public Libraries Act, 1984* apply with necessary modifications to the Library Board.

Idem

(2) For the purposes of clause 10 (1) (d) of the *Public Libraries Act, 1984*, any employee of any of the appointing bodies referred to in subsection 148 (1) shall be deemed to be an employee of the Metropolitan Corporation.

Idem

(3) For the purposes of clause 13 (d) of the *Public Libraries Act, 1984*, the reference therein to clause 10 (1) (c) shall be deemed to be a reference to the membership and residential requirements of clauses 148 (1) (a), (c), (d) and (e) of this Act.

Idem

(4) For the purposes of subsection 22 (1) of the *Public Libraries Act, 1984*, the Metropolitan Council shall be deemed to be the sole appointing council.

12. Section 150 of the said Act is amended by adding thereto the following subsection:

Annexation

(2a) On the 1st day of January, 1989,

- (a) that portion of the City of Brampton described as follows is annexed to The Corporation of the City of Etobicoke:

Parts 1, 2, 3, 4, 5 and 6 on a plan deposited in the Land Registry Office for the Registry Division of Peel (No. 43) as Plan 43R-10527; and

- (b) that portion of the Town of Vaughan described as follows is annexed to The Corporation of the City of Etobicoke:

Parts 1, 2 and 3 on a plan deposited in the Land Registry Office for the Registry Division of York Region (No. 65) as 65R-4820, Parts 1, 2, 3, 4, 5 and 6 on a plan deposited in the said Land Registry Office as 65R-4821, Parts 1 and 2 on a plan deposited in the said Land Registry Office as 65R-5681 and Parts 1, 2, 3, 4, 5, 6, 7, 8 and 11 on a plan deposited in the said Land Registry Office as 65R-8430.

13.—(1) Clause 152 (1) (a) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 19, section 10, is amended by striking out “councillors” in the second line and inserting in lieu thereof “members”.

(2) Clause 152 (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 19, section 10, is amended by striking out “councillors” in the second line and inserting in lieu thereof “members”.

(3) Section 152 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 19, section 10, is further amended by adding thereto the following subsection:

(4) The Borough of East York shall be deemed to be a city municipality for the purposes of subsections 30 (8), (9), (10) and (11) of the *Municipal Act*.

Deeming provision, title of members of council
R.S.O. 1980, c. 302

14. Section 166 of the said Act is repealed.

15.—(1) Subsection 206 (2) of the said Act is repealed and the following substituted therefor:

(2) In addition to the powers that may be exercised under subsection (1), the Metropolitan Council has power, subject to the *Community Recreation Centres Act*, to let, for such period as it considers advisable, the right to sell refreshments and, subject to the *Liquor Licence Act* and the regulations made thereunder, spirituous, fermented or intoxicating liquors within the metropolitan parks under such conditions as the Metropolitan Council may prescribe.

Sale of liquor in parks

R.S.O. 1980, cc. 80, 244

(2) Clause 206 (5) (a) of the said Act is repealed and the following substituted therefor:

- (a) exercise all or any of the powers conferred on it under subsections (1) and (2) in respect of such lands.

16. Section 224 of the said Act is amended by adding thereto the following subsection:

R.S.O. 1980,
c. 302,
s. 149 (2)
applies

- (4) Subsection 149 (2) of the *Municipal Act* applies with necessary modifications to the Metropolitan Corporation.

17.—(1) Subsection 227 (24) of the said Act is amended by striking out “two members appointed by the Metropolitan Council, and the two” in the third and fourth lines and inserting in lieu thereof “such other members appointed by the Metropolitan Council as it considers appropriate and the”.

(2) Subsection 227 (28) of the said Act is amended by striking out “Two” in the first line and inserting in lieu thereof “A majority of”.

18.—(1) Subsection 245 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 18, section 17 and amended by 1988, chapter 19, section 13 and 1988, chapter 31, section 19, is further amended by inserting after “106” in the second line “112”.

(2) Section 245 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 18, section 17, 1988, chapter 19, section 13 and 1988, chapter 31, section 19, is further amended by adding thereto the following subsection:

Fire co-
ordinator

(6a) The Metropolitan Council shall appoint a metropolitan fire co-ordinator who shall be responsible for the establishment of an emergency fire service plan for the Metropolitan Area, and the Metropolitan Corporation may spend such sums as it considers necessary to implement the plan.

Transition

19. Despite the re-enactment of subsections 148 (2) and (3) of the *Municipality of Metropolitan Toronto Act* by subsection 9 (2) of this Act, members of the Metropolitan Toronto Library Board in office on the day this Act comes into force continue in office until the 31st day of December, 1991.

Commence-
ment

20.—(1) This Act, except section 12, comes into force on the day it receives Royal Assent.

(2) Section 12 shall be deemed to have come into force on ^{Idem} the 1st day of January, 1989.

21. The short title of this Act is the *Municipality of Metro-* ^{Short title}
politan Toronto Amendment Act, 1989.

Bill 54

An Act to amend the Employment Standards Act

Mr. Jackson



1st Reading July 20th, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill amends the Act to provide greater flexibility to an employee entitled to pregnancy leave whose new-born child is required to be hospitalized for an extended period. The amendment would permit the employee to elect to resume her employment and defer taking the unexpired portion of her leave of absence until the child is released from hospital.

Bill 54

1989

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 36 of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections:

(6) If a new-born child of an employee who is entitled to a leave of absence under this section is required to be hospitalized for an extended period before the end of the leave, the employee may elect to resume her employment and defer taking the unexpired portion of the leave until the child is released from hospital.

Deferral of
leave where
child
hospitalized
for an
extended
period

(7) An employee making an election under subsection (6) shall, on or before the day she intends to resume her employment, give her employer notice in writing of her decision to make the election and furnish her employer with the certificate of a legally qualified medical practitioner stating that a new-born child of the employee is required to be hospitalized for an extended period.

Notice

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Employment Standards Amendment Act, 1989*.

Short title

Bill 55

An Act respecting the Township of South Dumfries

The Hon. J. Eakins
Minister of Municipal Affairs



1st Reading July 20th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to extend the boundaries of the hydro-electric service area and the urban service area of the Township of South Dumfries. Any future alteration of the boundaries of the urban service area would be determined by the Ontario Municipal Board.

Bill 55

1989

An Act respecting the Township of South Dumfries

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The area served by The Hydro-Electric Commission of South Dumfries, as established under subsection 5 (2) of *The Police Village of St. George Act, 1980*, is increased by adding to it the lands described in the Schedule.

Expansion of
area served
by The
Hydro-
Electric
Commission
1980, c. 45

2. The urban service area established under section 6 of *The Police Village of St. George Act, 1980* includes the land described in the Schedule and any land added by the Ontario Municipal Board under section 3.

Urban
service area

3.—(1) Upon the application of The Corporation of the Township of South Dumfries, the Ontario Municipal Board may alter the boundary of the urban service area.

Boundaries
of urban
service area

(2) Section 15 of the *Municipal Act* applies with necessary modifications to an application under subsection (1).

Application
of
R.S.O. 1980,
c. 302, s. 15

(3) Sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to a decision made in respect of an application under subsection (1).

R.S.O. 1980,
c. 347,
ss. 94, 95
do not apply

4. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

5. The short title of this Act is the *Township of South Dumfries Act, 1989*.

Short title

SCHEDULE

That portion of the Township of South Dumfries described as follows:

Commencing at a point in the westerly limit of County Road Number 13 distant 27.953 metres measured north $77^{\circ} 13'$ east from the northeasterly angle of Lot 51 as shown on a Plan registered in the Land Registry Office for the Registry Division of Brant (No.2) as Number 1155;

Thence north $16^{\circ} 10' 20''$ west along the westerly limit of the said Country Road 104.287 metres to a point;

Thence south $76^{\circ} 49' 30''$ west 504.739 metres to a point;

Thence south $76^{\circ} 49' 30''$ west 165 metres to a point;

Thence south $15^{\circ} 56' 05''$ east 98.585 metres to a point;

Thence easterly in a straight line to the place of commencement.

3
56

Bill 55

*(Chapter 51
Statutes of Ontario, 1989)*

An Act respecting the Township of South Dumfries

The Hon. J. Sweeney
Minister of Municipal Affairs



<i>1st Reading</i>	July 20th, 1989
<i>2nd Reading</i>	October 10th, 1989
<i>3rd Reading</i>	October 16th, 1989
<i>Royal Assent</i>	October 16th, 1989

Bill 55

1989

An Act respecting the Township of South Dumfries

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The area served by The Hydro-Electric Commission of South Dumfries, as established under subsection 5 (2) of *The Police Village of St. George Act, 1980*, is increased by adding to it the lands described in the Schedule.

Expansion of
area served
by The
Hydro-
Electric
Commission
1980, c. 45

2. The urban service area established under section 6 of *The Police Village of St. George Act, 1980* includes the land described in the Schedule and any land added by the Ontario Municipal Board under section 3.

Urban
service area

3.—(1) Upon the application of The Corporation of the Township of South Dumfries, the Ontario Municipal Board may alter the boundary of the urban service area.

Boundaries
of urban
service area

(2) Section 15 of the *Municipal Act* applies with necessary modifications to an application under subsection (1).

Application
of
R.S.O. 1980,
c. 302, s. 15

(3) Sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to a decision made in respect of an application under subsection (1).

R.S.O. 1980,
c. 347,
ss. 94, 95
do not apply

4. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

5. The short title of this Act is the *Township of South Dumfries Act, 1989*.

Short title

SCHEDULE

That portion of the Township of South Dumfries described as follows:

Commencing at a point in the westerly limit of County Road Number 13 distant 27.953 metres measured north $77^{\circ} 13'$ east from the northeasterly angle of Lot 51 as shown on a Plan registered in the Land Registry Office for the Registry Division of Brant (No.2) as Number 1155;

Thence north $16^{\circ} 10' 20''$ west along the westerly limit of the said Country Road 104.287 metres to a point;

Thence south $76^{\circ} 49' 30''$ west 504.739 metres to a point;

Thence south $76^{\circ} 49' 30''$ west 165 metres to a point;

Thence south $15^{\circ} 56' 05''$ east 98.585 metres to a point;

Thence easterly in a straight line to the place of commencement.

Bill 56

An Act to amend the Landlord and Tenant Act

Mr. Philip
(Etobicoke-Rexdale)



1st Reading July 25th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The main purpose of the Bill, as set out in the proposed subsection 109 (1a) of the *Landlord and Tenant Act*, is to provide that the breach by a tenant of a provision in a tenancy agreement will not, in itself, be grounds for a landlord to obtain a writ of possession. An exception is provided for a rental condominium unit if the declaration for the condominium prohibits the breach.

The Bill also re-enacts clause 109 (1) (c) to confine the scope of that clause to conduct of a tenant that substantially interferes with the reasonable enjoyment of the premises by other tenants or by a landlord who resides in the premises.

The definition of “residents” set out in the proposed subsection 109 (1c) is complementary to the other amendments proposed by the Bill.

Bill 56

1989

**An Act to amend the
Landlord and Tenant Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 109 (l) (c) of the *Landlord and Tenant Act*, being chapter 232 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (c) the conduct of the tenant or a person permitted in the residential premises by the tenant is such that it substantially interferes with the reasonable enjoyment of the premises for all usual purposes by the other residents.

(2) Section 109 of the said Act is amended by adding thereto the following subsections:

(1a) For purposes of clause (1) (c), the breach by a tenant of a provision of a tenancy agreement does not in itself constitute conduct of the tenant that substantially interferes with the reasonable enjoyment of the premises for all usual purposes by the other residents. Breach of
tenancy
agreement

(1b) Subsection (1a) does not apply to a tenancy agreement in respect of a unit of a corporation to which the *Condominium Act* applies if the declaration for that corporation prohibits the conduct involved in the breach of the tenancy agreement. Exception
R.S.O. 1980,
c. 84

(1c) In clause (l) (c) and subsection (1a), “residents” means, Definition

- (a) tenants of the premises; and
- (b) the landlord of the premises, if the landlord resides in the premises.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Landlord and Tenant Amendment Act, 1989*.

Bill 57

An Act to amend the Limitations Act

Mr. Cooke
(Kitchener)



1st Reading July 26th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to defer the commencement of the limitation period for an action for sexual assault where the person entitled to bring the action is at the time the cause of action accrues unable to bring an action because of a physical, mental or other condition. The section to be added by the Bill would provide that in such circumstances the action shall be commenced within four years from the time the condition no longer renders the person unable to bring an action.

The Bill would create a rebuttable presumption that a person bringing an action for sexual assault qualifies for the deferred limitation period and has commenced the action within the period.

Bill 57

1989

An Act to amend the Limitations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Limitations Act*, being chapter 240 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

45a.—(1) Notwithstanding clause 45 (1) (j), if a person entitled to bring an action for sexual assault is at the time the cause of action accrues unable to bring an action because of a physical, mental or other condition, the action shall be commenced within four years from the time the condition no longer renders the person unable to bring an action.

(2) For purposes of subsection (1), there is a rebuttable presumption that,

- (a) the sexual assault caused a physical, mental or other condition that rendered the person bringing the action unable to bring an action at the time the cause of action accrued;
- (b) the condition was of a continuing nature; and
- (c) the action has been commenced within four years from the time the condition no longer renders the person unable to bring an action.

(3) This section applies to an action for sexual assault regardless of whether the cause of action arose before or after the coming into force of this section.

2. This Act comes into force on the day it receives Royal Assent.

3. The short title of this Act is the *Limitations Amendment Act, 1989*.

Bill 58

An Act respecting the Toronto Transit Commission Labour Disputes

The Hon. G. Phillips
Minister of Labour



1st Reading October 10th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill provides for the settlement of the current labour disputes between the Toronto Transit Commission and its employees as represented by the unions.

Employees will be awarded a 5 per cent increase in wages retroactive to the expiry dates of their respective collective agreements. This may be increased by the arbitrator. (Section 7)

The dispute related to staffing (including the use of part-time workers) between the Commission and Local 113, Amalgamated Transit Union will be referred to a fact-finder who will review the matter and make a report to the Commission, to the Local and to the Minister of Labour. (Section 5)

All other matters in dispute between the Commission and the unions will be referred to binding arbitration. (Section 6)

Bill 58

1989

An Act respecting the Toronto Transit Commission Labour Disputes

CONTENTS

Section	Section
1. Definitions	7. Wage increase
2. Application of Act	8. Non-application of certain Acts
3. Strike or lock-out to be terminated	9. Application of <i>Labour Relations Act</i> provisions
4. Appointment of fact-finder and arbitrator	10. Offence and penalties
5. Fact-finding	11. Costs
6. Arbitration	12. Commencement and repeal
	13. Short title

WHEREAS the Toronto Transit Commission and Local 113, Amalgamated Transit Union, Lodge 235, International Association of Machinists and Aerospace Workers and the Canadian Union of Public Employees, Local No. 2 were parties to collective agreements which have expired; and whereas the parties have bargained for new collective agreements and have exhausted the conciliation process under the *Labour Relations Act*; and whereas the parties have not settled the disputes and negotiations have reached an impasse; and whereas the disputes have adversely affected public transit service, and whereas the public interest and welfare requires that a means be provided to address the matters in dispute so that new collective agreements may be concluded and full public transit service can be restored;

Preamble

R.S.O. 1980,
c. 228

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“employees” means the employees of the employer in the bargaining units represented by the unions;

“employer” means the Toronto Transit Commission;

“expiry date” means, in the case of the collective agreement between the employer and,

- (a) Local 113, Amalgamated Transit Union, the 30th day of June, 1989,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, the 31st day of March, 1989, and
- (c) the Canadian Union of Public Employees, Local No. 2, the 31st day of March, 1989;

“parties” means the employer and the unions;

“unions” means,

- (a) Local 113, Amalgamated Transit Union,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, and
- (c) Canadian Union of Public Employees, Local No. 2.

Idem
R.S.O. 1980,
c. 228

(2) Unless a contrary intention appears, expressions used in this Act have the same meaning as in the *Labour Relations Act*.

Application
of Act

2.—(1) This Act applies to the parties and to the employees.

Application
of
R.S.O. 1980,
c. 228

(2) Except as modified by this Act, the *Labour Relations Act* applies to the parties and to the employees.

Strike or
lock-out
to be
terminated

3.—(1) Any strike or lock-out shall be terminated by the parties and the employees immediately upon the coming into force of this Act.

Work
assignments

(2) Every employee shall report to work and shall perform his or her duties in accordance with his or her work assignment.

Normal
operations

(3) The employer shall operate and continue to operate its undertakings to their normal extent, scope and capacity.

No strike or
lock-out

(4) No person shall engage in, declare, authorize, counsel, threaten or acquiesce in any lock-out, strike or picketing or in any activity contrary to any provision of this Act.

(5) The employer shall not, except in accordance with this Act or with the consent of the unions, alter the rates of wages of the employees or any other term or condition of employment, or any right, privilege or duty of the unions or the employees, that was in operation on the expiry date.

Terms of employment not to be altered

(6) The unions shall not, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the unions or the employees, that was in operation on the expiry date.

Idem

(7) Any dispute between the parties as to whether subsections (5) and (6) have been complied with may be referred to arbitration by either party as if the collective agreements that were in force on the expiry date were still in operation, and sections 44 and 45 of the *Labour Relations Act* apply with necessary modifications thereto.

Compliance with subss. (5) and (6)

R.S.O. 1980, c. 228

4.—(1) The Lieutenant Governor in Council, upon the advice of the Minister of Labour, shall appoint,

Appointment of fact-finder and arbitrator

(a) a fact-finder who shall have exclusive jurisdiction to investigate and report on the matters referred to in section 5; and

(b) an arbitrator who shall have exclusive jurisdiction to hear and determine the matters referred to in section 6.

(2) The Lieutenant Governor in Council may appoint the person who is appointed to be the fact-finder to also act as the arbitrator.

Idem

(3) If the fact-finder is unable to perform his or her duties so as to enable a report to be made within the period of time mentioned in subsection 5 (6), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as fact-finder and the process, except for any agreement or decision made under subsection 5 (2), shall begin anew.

Replacement of fact-finder

(4) If the arbitrator is unable to perform his or her duties so as to make an award within the period of time mentioned in subsection 6 (4), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as arbitrator and the process shall begin anew.

Replacement of arbitrator

(5) The fact-finder shall determine his or her own procedure but, in respect of a decision under subsection 5 (2), shall permit the parties to present evidence and make submissions.

Procedure, fact-finder

Procedure,
arbitrator

(6) The arbitrator shall determine his or her own procedure but shall permit the parties to present evidence and make submissions.

Powers

(7) The fact-finder and the arbitrator each has power,

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as he or she considers requisite to the full investigation and consideration of the matters referred to him or her in the same manner as a court of record in civil cases;
- (b) to administer oaths and affirmations;
- (c) to accept such oral or written evidence as he or she considers proper, whether or not admissible in a court of law;
- (d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to him or her, and inspect and view any work, material, machinery, appliance or article therein, and to ask employees questions;
- (e) to authorize any person to do anything that he or she may do under clause (d) and to report to him or her thereon.

Remuneration
and expenses

(8) The arbitrator and the fact-finder shall be paid such remuneration and expenses as the Lieutenant Governor in Council may decide.

Fact-finding

5.—(1) The fact-finder shall conduct a comprehensive investigation of all matters relevant to the staffing dispute, including the use of part-time workers, between the employer and Local 113, Amalgamated Transit Union and the fact-finder shall make a report together with any recommendations thereon to the parties and to the Minister of Labour.

Scope of
investigation

(2) Within thirty days after his or her appointment, the fact-finder and the parties shall attempt to define which issues related to the staffing dispute, including the use of part-time workers, are to be investigated by the fact-finder, failing which the fact-finder, within fourteen additional days or within such longer period as the Minister of Labour may permit, shall decide the issues to be investigated.

(3) The decision of the fact-finder under subsection (2) is final and binding on the employer, the Local and the arbitrator. Decision

(4) The fact-finder shall notify the Minister of Labour of any agreement under subsection (2) and the fact-finder shall notify the Minister, the employer and the Local of a decision under that subsection. Notice

(5) The fact-finder may attempt to mediate a settlement of the issues under investigation at any time during the investigation. Mediation

(6) Subject to subsection (7), the fact-finder shall submit his or her report and recommendations, if any, to the Minister, the employer and the Local by the 30th day of June, 1990, or such later date as the Minister may permit. Time-limit

(7) The fact-finder shall terminate the investigation and shall not be required to make a report if the employer and the Local agree on a settlement of the issues under investigation. End of investigation

(8) If the fact-finder issues a report, the employer and the Local shall bargain in good faith and make every reasonable effort to settle the unresolved issues in the staffing dispute, including the use of part-time workers. Attempt to settle

(9) An agreement between the employer and the Local on any issue that is or was the subject of the fact-finder's investigation or report shall be deemed to be part of the collective agreement between the employer and the Local expiring on the 30th day of June, 1991. Effect of agreement

(10) Section 89 of the *Labour Relations Act* applies with necessary modifications to the enforcement of subsection (8). Application of R.S.O. 1980, c. 228, s. 89

(11) In addition to the issues that are the subject of the investigation, the fact-finder, as part of the investigation and report, may consider any other matter related to or contained in any collective agreement between the employer and the Local that he or she considers relevant to the settlement of the issues under investigation and may make recommendations thereon. Additional matters

6.—(1) Subject to subsection (2), the arbitrator shall determine all matters remaining in dispute between the employer and the unions immediately before the coming into force of this Act, including any matter that may be a subject of dispute as to agreement thereon and any other matters that Arbitration

appear to the arbitrator to be necessary to be decided in order to conclude collective agreements between the parties.

Exception

(2) The arbitrator, in his or her role as arbitrator, shall not deal with any issue in dispute between the employer and Local 113, Amalgamated Transit Union, related to staffing, including the use of part-time workers, that is the subject of the fact-finder's investigation as agreed or decided under section 5 (2).

Agreement
of parties
incorporated

(3) If the parties reach agreement on any terms or conditions before the rendering of an award by the arbitrator and the arbitrator is informed in writing, the award of the arbitrator shall be confined to those issues which remain in dispute and to those matters which, in the opinion of the arbitrator, must be decided in order to conclude collective agreements between the parties.

Time-limit

(4) The arbitrator shall make an award within sixty days after the day the notice is given to the Minister under subsection 5 (4), or within such further period of time as the Minister may permit.

Arbitrator
remains
seized

(5) The arbitrator remains seized of and may deal with all matters within his or her jurisdiction until collective agreements between the parties are in effect.

Terms of
agreements

(6) The collective agreements between the parties shall be for periods in each case commencing on the day immediately following the expiry date and expiring on the second anniversary of the expiry date.

Award final
and binding

(7) The award of the arbitrator is final and binding upon the parties and the employees.

Execution of
agreement

(8) Within seven days after the date of the award of the arbitrator, or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute documents giving effect to the award, and the documents thereupon constitute collective agreements.

Preparation
of agreement
by arbitrator

(9) If the parties fail to prepare and execute documents in the form of collective agreements giving effect to the award of the arbitrator within the period mentioned in subsection (8), they shall notify the arbitrator in writing forthwith, and the arbitrator shall prepare documents in the form of collective agreements giving effect to his or her award and submit the document to the parties for execution.

(10) If the parties or any of them fail to execute the documents prepared by the arbitrator within a period of seven days from the day the arbitrator submits the documents to them, the documents shall come into effect as though they had been executed by the parties and the documents thereupon constitute collective agreements.

Failure to
execute
agreement

7.—(1) The basic hourly rates of wages for the employees are hereby increased by 5 per cent over the basic hourly wage rates in effect on the expiry date, retroactive to the day immediately following the expiry date, and the award of the arbitrator shall include such increase.

Wage
increase

(2) Nothing in this section prevents the parties from agreeing or the arbitrator from granting increases in the basic wage rates in excess of those established by this section.

Idem

8.—(1) The *Arbitrations Act* does not apply to arbitration proceedings under this Act.

R.S.O. 1980,
c. 25
not to apply

(2) Part I of the *Statutory Powers Procedure Act* does not apply to arbitration proceedings or to any decision-making process or investigation of the fact-finder under this Act.

Idem
R.S.O. 1980,
c. 484

9. Sections 92, 93, 94, 95, 97, 98, 99 and 100 of the *Labour Relations Act* apply to the parties and to the employees with necessary modifications.

Application
of
R.S.O. 1980,
c. 228

10.—(1) A person or union who contravenes any provision of this Act is guilty of an offence and on conviction is liable,

Offence and
penalties

(a) if an individual, to a fine of not more than \$1,000;
or

(b) if the employer or a union, to a fine of not more than \$10,000.

(2) Each day that a person or the union contravenes any provision of this Act constitutes a separate offence.

Continuing
offences

(3) No prosecution for an offence under this Act shall be instituted except with the written consent of the Minister of Labour.

Consent to
prosecute

(4) Section 101 of the *Labour Relations Act* does not apply to a prosecution for an offence under this Act.

R.S.O. 1980,
c. 228, s. 101
not to apply

(5) In a prosecution for an offence under this Act, a copy of a consent purporting to have been signed by the Minister of

Evidence of
consent

Labour is sufficient evidence of the Minister's consent without proof of the signature.

Costs

11. The employer and the union shall assume their own costs of the proceedings under this Act, and the remuneration and expenses of the arbitrator and the fact-finder shall be paid out of the Consolidated Revenue Fund.

Commence-
ment

12.—(1) This Act comes into force when it receives Royal Assent.

Repeal

(2) This Act is repealed on the 31st day of March, 1991.

Short title

13. The short title of this Act is the *Toronto Transit Commission Labour Disputes Settlement Act, 1989*.

Bill 58

(Chapter 52
Statutes of Ontario, 1989)

An Act respecting the Toronto Transit Commission Labour Disputes

The Hon. G. Phillips
Minister of Labour



<i>1st Reading</i>	October 10th, 1989
<i>2nd Reading</i>	October 11th, 1989
<i>3rd Reading</i>	October 16th, 1989
<i>Royal Assent</i>	October 16th, 1989

Bill 58

1989

An Act respecting the Toronto Transit Commission Labour Disputes

CONTENTS

Section

1. Definitions
2. Application of Act
3. Strike or lock-out to be terminated
4. Appointment of fact-finder and arbitrator
5. Fact-finding
6. Arbitration

Section

7. Wage increase
8. Non-application of certain Acts
9. Application of *Labour Relations Act* provisions
10. Offence and penalties
11. Costs
12. Commencement and repeal
13. Short title

WHEREAS the Toronto Transit Commission and Local 113, Amalgamated Transit Union, Lodge 235, International Association of Machinists and Aerospace Workers and the Canadian Union of Public Employees, Local No. 2 were parties to collective agreements which have expired; and whereas the parties have bargained for new collective agreements and have exhausted the conciliation process under the *Labour Relations Act*; and whereas the parties have not settled the disputes and negotiations have reached an impasse; and whereas the disputes have adversely affected public transit service, and whereas the public interest and welfare requires that a means be provided to address the matters in dispute so that new collective agreements may be concluded and full public transit service can be restored;

Preamble

R.S.O. 1980,
c. 228

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“employees” means the employees of the employer in the bargaining units represented by the unions;

“employer” means the Toronto Transit Commission;

“expiry date” means, in the case of the collective agreement between the employer and,

- (a) Local 113, Amalgamated Transit Union, the 30th day of June, 1989,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, the 31st day of March, 1989, and
- (c) the Canadian Union of Public Employees, Local No. 2, the 31st day of March, 1989;

“parties” means the employer and the unions;

“unions” means,

- (a) Local 113, Amalgamated Transit Union,
- (b) Lodge 235, International Association of Machinists and Aerospace Workers, and
- (c) Canadian Union of Public Employees, Local No. 2.

Idem
R.S.O. 1980,
c. 228

(2) Unless a contrary intention appears, expressions used in this Act have the same meaning as in the *Labour Relations Act*.

Application
of Act

2.—(1) This Act applies to the parties and to the employees.

Application
of
R.S.O. 1980,
c. 228

(2) Except as modified by this Act, the *Labour Relations Act* applies to the parties and to the employees.

Strike or
lock-out
to be
terminated

3.—(1) Any strike or lock-out shall be terminated by the parties and the employees immediately upon the coming into force of this Act.

Work
assignments

(2) Every employee shall report to work and shall perform his or her duties in accordance with his or her work assignment.

Normal
operations

(3) The employer shall operate and continue to operate its undertakings to their normal extent, scope and capacity.

No strike or
lock-out

(4) No person shall engage in, declare, authorize, counsel, threaten or acquiesce in any lock-out, strike or picketing or in any activity contrary to any provision of this Act.

(5) The employer shall not, except in accordance with this Act or with the consent of the unions, alter the rates of wages of the employees or any other term or condition of employment, or any right, privilege or duty of the unions or the employees, that was in operation on the expiry date.

Terms of employment not to be altered

(6) The unions shall not, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the unions or the employees, that was in operation on the expiry date.

Idem

(7) Any dispute between the parties as to whether subsections (5) and (6) have been complied with may be referred to arbitration by either party as if the collective agreements that were in force on the expiry date were still in operation, and sections 44 and 45 of the *Labour Relations Act* apply with necessary modifications thereto.

Compliance with subss. (5) and (6)

R.S.O. 1980, c. 228

4.—(1) The Lieutenant Governor in Council, upon the advice of the Minister of Labour, shall appoint,

Appointment of fact-finder and arbitrator

(a) a fact-finder who shall have exclusive jurisdiction to investigate and report on the matters referred to in section 5; and

(b) an arbitrator who shall have exclusive jurisdiction to hear and determine the matters referred to in section 6.

(2) The Lieutenant Governor in Council may appoint the person who is appointed to be the fact-finder to also act as the arbitrator.

Idem

(3) If the fact-finder is unable to perform his or her duties so as to enable a report to be made within the period of time mentioned in subsection 5 (6), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as fact-finder and the process, except for any agreement or decision made under subsection 5 (2), shall begin anew.

Replacement of fact-finder

(4) If the arbitrator is unable to perform his or her duties so as to make an award within the period of time mentioned in subsection 6 (4), the Lieutenant Governor in Council shall, upon the advice of the Minister of Labour, appoint another person to act as arbitrator and the process shall begin anew.

Replacement of arbitrator

(5) The fact-finder shall determine his or her own procedure but, in respect of a decision under subsection 5 (2), shall permit the parties to present evidence and make submissions.

Procedure, fact-finder

Procedure,
arbitrator

(6) The arbitrator shall determine his or her own procedure but shall permit the parties to present evidence and make submissions.

Powers

(7) The fact-finder and the arbitrator each has power,

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as he or she considers requisite to the full investigation and consideration of the matters referred to him or her in the same manner as a court of record in civil cases;
- (b) to administer oaths and affirmations;
- (c) to accept such oral or written evidence as he or she considers proper, whether or not admissible in a court of law;
- (d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to him or her, and inspect and view any work, material, machinery, appliance or article therein, and to ask employees questions;
- (e) to authorize any person to do anything that he or she may do under clause (d) and to report to him or her thereon.

Remuneration
and expenses

(8) The arbitrator and the fact-finder shall be paid such remuneration and expenses as the Lieutenant Governor in Council may decide.

Fact-finding

5.—(1) The fact-finder shall conduct a comprehensive investigation of all matters relevant to the staffing dispute, including the use of part-time workers, between the employer and Local 113, Amalgamated Transit Union and the fact-finder shall make a report together with any recommendations thereon to the parties and to the Minister of Labour.

Scope of
investigation

(2) Within thirty days after his or her appointment, the fact-finder and the parties shall attempt to define which issues related to the staffing dispute, including the use of part-time workers, are to be investigated by the fact-finder, failing which the fact-finder, within fourteen additional days or within such longer period as the Minister of Labour may permit, shall decide the issues to be investigated.

(3) The decision of the fact-finder under subsection (2) is final and binding on the employer, the Local and the arbitrator.

Decision

(4) The fact-finder shall notify the Minister of Labour of any agreement under subsection (2) and the fact-finder shall notify the Minister, the employer and the Local of a decision under that subsection.

Notice

(5) The fact-finder may attempt to mediate a settlement of the issues under investigation at any time during the investigation.

Mediation

(6) Subject to subsection (7), the fact-finder shall submit his or her report and recommendations, if any, to the Minister, the employer and the Local by the 30th day of June, 1990, or such later date as the Minister may permit.

Time-limit

(7) The fact-finder shall terminate the investigation and shall not be required to make a report if the employer and the Local agree on a settlement of the issues under investigation.

End of investigation

(8) If the fact-finder issues a report, the employer and the Local shall bargain in good faith and make every reasonable effort to settle the unresolved issues in the staffing dispute, including the use of part-time workers.

Attempt to settle

(9) An agreement between the employer and the Local on any issue that is or was the subject of the fact-finder's investigation or report shall be deemed to be part of the collective agreement between the employer and the Local expiring on the 30th day of June, 1991.

Effect of agreement

(10) Section 89 of the *Labour Relations Act* applies with necessary modifications to the enforcement of subsection (8).

Application of R.S.O. 1980, c. 228, s. 89

(11) In addition to the issues that are the subject of the investigation, the fact-finder, as part of the investigation and report, may consider any other matter related to or contained in any collective agreement between the employer and the Local that he or she considers relevant to the settlement of the issues under investigation and may make recommendations thereon.

Additional matters

6.—(1) Subject to subsection (2), the arbitrator shall determine all matters remaining in dispute between the employer and the unions immediately before the coming into force of this Act, including any matter that may be a subject of dispute as to agreement thereon and any other matters that

Arbitration

appear to the arbitrator to be necessary to be decided in order to conclude collective agreements between the parties.

Exception

(2) The arbitrator, in his or her role as arbitrator, shall not deal with any issue in dispute between the employer and Local 113, Amalgamated Transit Union, related to staffing, including the use of part-time workers, that is the subject of the fact-finder's investigation as agreed or decided under subsection 5 (2).

Agreement
of parties
incorporated

(3) If the parties reach agreement on any terms or conditions before the rendering of an award by the arbitrator and the arbitrator is informed in writing, the award of the arbitrator shall be confined to those issues which remain in dispute and to those matters which, in the opinion of the arbitrator, must be decided in order to conclude collective agreements between the parties.

Time-limit

(4) The arbitrator shall make an award within sixty days after the day the notice is given to the Minister under subsection 5 (4), or within such further period of time as the Minister may permit.

Arbitrator
remains
seized

(5) The arbitrator remains seized of and may deal with all matters within his or her jurisdiction until collective agreements between the parties are in effect.

Terms of
agreements

(6) The collective agreements between the parties shall be for periods in each case commencing on the day immediately following the expiry date and expiring on the second anniversary of the expiry date.

Award final
and binding

(7) The award of the arbitrator is final and binding upon the parties and the employees.

Execution of
agreement

(8) Within seven days after the date of the award of the arbitrator, or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute documents giving effect to the award, and the documents thereupon constitute collective agreements.

Preparation
of agreement
by arbitrator

(9) If the parties fail to prepare and execute documents in the form of collective agreements giving effect to the award of the arbitrator within the period mentioned in subsection (8), they shall notify the arbitrator in writing forthwith, and the arbitrator shall prepare documents in the form of collective agreements giving effect to his or her award and submit the document to the parties for execution.

(10) If the parties or any of them fail to execute the documents prepared by the arbitrator within a period of seven days from the day the arbitrator submits the documents to them, the documents shall come into effect as though they had been executed by the parties and the documents thereupon constitute collective agreements.

Failure to
execute
agreement

7.—(1) The basic hourly rates of wages for the employees are hereby increased by 5 per cent over the basic hourly wage rates in effect on the expiry date, retroactive to the day immediately following the expiry date, and the award of the arbitrator shall include such increase.

Wage
increase

(2) Nothing in this section prevents the parties from agreeing or the arbitrator from granting increases in the basic wage rates in excess of those established by this section.

Idem

8.—(1) The *Arbitrations Act* does not apply to arbitration proceedings under this Act.

R.S.O. 1980,
c. 25
not to apply

(2) Part I of the *Statutory Powers Procedure Act* does not apply to arbitration proceedings or to any decision-making process or investigation of the fact-finder under this Act.

Idem
R.S.O. 1980,
c. 484

9. Sections 92, 93, 94, 95, 97, 98, 99 and 100 of the *Labour Relations Act* apply to the parties and to the employees with necessary modifications.

Application
of
R.S.O. 1980,
c. 228

10.—(1) A person or union who contravenes any provision of this Act is guilty of an offence and on conviction is liable,

Offence and
penalties

(a) if an individual, to a fine of not more than \$1,000;
or

(b) if the employer or a union, to a fine of not more than \$10,000.

(2) Each day that a person or the union contravenes any provision of this Act constitutes a separate offence.

Continuing
offences

(3) No prosecution for an offence under this Act shall be instituted except with the written consent of the Minister of Labour.

Consent to
prosecute

(4) Section 101 of the *Labour Relations Act* does not apply to a prosecution for an offence under this Act.

R.S.O. 1980,
c. 228, s. 101
not to apply

(5) In a prosecution for an offence under this Act, a copy of a consent purporting to have been signed by the Minister of

Evidence of
consent

Labour is sufficient evidence of the Minister's consent without proof of the signature.

Costs

11. The employer and the union shall assume their own costs of the proceedings under this Act, and the remuneration and expenses of the arbitrator and the fact-finder shall be paid out of the Consolidated Revenue Fund.

Commence-
ment

12.—(1) This Act comes into force when it receives Royal Assent.

Repeal

(2) This Act is repealed on the 31st day of March, 1991.

Short title

13. The short title of this Act is the *Toronto Transit Commission Labour Disputes Settlement Act, 1989*.

Bill 59

An Act to amend the Ontario Energy Board Act

Mr. Charlton



1st Reading October 10th, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to give the Ontario Energy Board additional powers to regulate electricity rates and to investigate matters such as demand and supply options, short and long term planning and avoided costs.

Bill 59

1989

**An Act to amend
the Ontario Energy Board Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 13 of the *Ontario Energy Board Act*, being Chapter 332 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections:

(7) The Board has the power to investigate electricity demand and supply options, short and long term planning criteria, avoided costs and the adequacy of supply from sources from outside Ontario. Power of Board

(8) If the Board conducts an investigation under subsection (7), it shall report to the Minister, with recommendations. Report

2. Subsection 27 (1) of the said Act is amended by adding thereto the following clause:

- (e) make the rules governing its practice and procedure in any matter required to be done under clause 35 (1) (ba), (ha) or (hb).

3. Subsection 35 (1) of the said Act is amended by adding thereto the following clauses:

- (ba) authorizing and requiring the Board to fix rates pursuant to a public hearing held under section 37 and prescribing the conditions and circumstances when the Board shall fix rates pursuant to a public hearing;

.

- (ha) authorize the Board to regulate rate levels and structures and prescribing the methods and procedures to be followed when so regulating;

(hb) authorizing the Board to regulate the supply and prices to be paid to non-utility producers and prescribing the methods and procedures to be followed when so regulating.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Ontario Energy Board Amendment Act, 1989*.

Bill 60

An Act to amend the Income Tax Act

The Hon. R. Mancini

Minister of Revenue



1st Reading October 11th, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

GENERAL. The Bill implements the proposal contained in the Treasurer's Budget of May 17, 1989 to increase the rate of personal income tax to 53 per cent of Federal income tax for 1990 and subsequent taxation years.

The Bill also makes administrative amendments designed to reduce uncertainty for taxpayers caused by the unavoidable time-lags between the enactment of administrative amendments to the *Income Tax Act* (Canada) (the "Federal Act") and subsequent parallel amendments to the corresponding provisions of the Ontario Act. Instead of containing only identical parallel administrative provisions, the Ontario Act will adopt the same or similar provisions by means of statutory reference to the particular administrative sections of the Federal Act. Following such amendments, any further amendments to the Federal provisions previously adopted for Ontario purposes will automatically apply for Ontario personal income tax purposes. Adopting Federal administrative provisions by direct statutory reference will assist Revenue Canada, Taxation, in the administration of the Ontario Act under the terms of the Federal-Provincial Collection Agreement.

The Bill also makes several amendments consequential upon amendments made to the Federal Act.

SECTION 1. The addition of subsection 1 (6) to the Act provides interpretation rules for applying the provisions of the Federal Act which will be adopted by statutory reference for the purposes of the Act by the amendments made by the Bill.

SECTION 2.—Subsections 1 and 2. The addition of clause 3 (5) (o) to the Act implements the Treasurer's Budget proposal to increase the rate of personal income tax for 1990 and subsequent taxation years.

Subsections 3 and 4. The amendments to subsection 3 (8) are consequential upon amendments to the foreign tax credit under the Federal Act.

SECTION 3. The re-enactment of subsection 7 (2c) clarifies that a sales tax credit may be claimed only once in respect of the same person.

SECTION 4. The amendments to section 8 adopt by statutory reference the parallel provisions in the Federal Act relating to annual returns of income.

SECTIONS 5, 6 and 7. The re-enactment of sections 9 and 10 and the repeal of section 11 result in the adoption by statutory reference of the provisions in the Federal Act relating to the requirement to estimate tax in returns of income, the authority to use tax tables to determine the amount of tax payable, assessments by the Minister and the requirement to withhold tax.

SECTIONS 8 and 9. The re-enactment of subsections 12 (1) and 13 (1) is consequential upon amendments to the Federal Act.

SECTIONS 10 and 11. New sections 14 and 14a make the provisions of the Federal Act relating to the time for payment of tax, liability for tax on amounts paid from RRSP's, registered retirement income funds and retirement compensation arrangements and interest on tax not paid or overpaid apply for the purposes of the Act.

SECTION 12. The re-enactment of section 15 clarifies that a tax refund under the Act will include the amount of any refundable Ontario tax credits.

SECTION 13. The re-enactment of section 16 continues the provisions currently contained in subsection 16 (4), but makes amendments to the wording consequential upon the adoption of portions of section 161 of the Federal Act.

SECTIONS 14 and 15. The re-enactment of sections 17 and 18 will ensure the sections conform with the parallel provisions of the Federal Act. New section 18a will impose a

penalty on late or deficient instalments similar to the penalty imposed under section 163.1 of the Federal Act.

SECTION 16. The re-enactment of section 19 adopts the provisions in the Federal Act relating to the refund of overpayments of tax.

SECTIONS 17 and 18. The re-enactment of section 20 adopts the provisions of the Federal Act relating to objections to tax assessments and the amendments to subsection 21 (1) are consequential to these amendments.

SECTIONS 19 and 20. The re-enactment of section 24 and the repeal of section 26 implement the adoption of the provisions of the Federal Act relating to the effect of irregularities in assessments and proceedings *in camera*.

SECTION 21. The re-enactment of section 27 adopts the provisions in the Federal Act relating to the general administration of the Act, the extension of time for making returns, the acceptance of security for the payment of tax, the administration of oaths, garnishment by direction of the Minister and restrictions on proceedings to collect tax.

SECTION 22. The re-enactment of section 31 ensures that the provisions of that section are consistent with the parallel provisions in section 223 of the Federal Act as recently amended and provides that where a collection agreement is in force between Ontario and Canada, the provisions of section 223 of the Federal Act apply for the purposes of the Act, instead of the provisions of subsections 31 (1) to (3) of the Act.

SECTION 23. The repeal of section 33 is consequential upon the adoption of section 224 of the Federal Act relating to garnishments.

SECTION 24. The re-enactment of section 34 ensures that the provisions relating to a seizure of chattels in satisfaction of a tax liability will correspond to the parallel provisions in subsection 225(1) of the Federal Act and provide that the provisions in the Federal Act relating to the procedures following the seizure of chattels to enforce payment of tax will apply for the purposes of the Act.

SECTION 25. The amendments to subsection 35 (2) are consequential upon the amendments made in section 24 of the Bill.

SECTION 26.—Subsections 1 to 5. The re-enactment of subsection 36 (1) adopts the provisions of the Federal Act relating to the withholding or deduction of amounts from payments of wages, salaries, pensions, etc., and the remittance of the amounts to the Crown on account of income tax payable by the recipients of the payments.

Subsection 6. The re-enactment of subsection 36 (8) and the enactment of subsection 36 (8a) ensure the provisions of the Act correspond with the parallel provisions in the Federal Act relating to an assessment for amounts required to have been withheld and remitted.

SECTION 27. The amendment to subsection 36a (1) is consequential upon the adoption of section 153 of the Federal Act by subsection 9 (1) of the Act.

SECTION 28. The amendments to section 37 of adopt the provisions of the Federal Act relating to the keeping of books and records.

SECTIONS 29 and 30. The repeal of sections 39 and 40 and the re-enactment of section 38 adopt the provisions of the Federal Act relating to inspections, solicitor-client privilege, demands by the Minister for returns and corporate execution for the purposes of the Act.

SECTION 31. The repeal of section 42 is consequential upon the adoption of section 236 of the Federal Act.

SECTION 32. The re-enactment of section 43 ensures that it is consistent with the corresponding provision in section 238 of the Federal Act.

SECTION 33. The amendments to section 44 ensure that it is consistent with the corresponding provisions in the Federal Act.

SECTION 34. The amendments to section 46 ensure the wording is consistent with the confidentiality provisions applicable to Revenue Canada under the Federal Act, since the Act is administered by Revenue Canada under the Collection Agreement, and permit the exchange of information with the Treasurer of Ontario in connection with the development and evaluation of Ontario tax policy.

SECTION 35.—Subsection 1. The re-enactment of subsection 49 (3) provides for an extension of the limitation period for prosecutions of offences under the Act to eight years, which is the current time limitation under the Federal Act with respect to the same types of offences.

Subsection 2. The amendments ensure the provisions in the Act relating to determination of the date of mailing and of receipt of items is the same under both the Act and the Federal Act.

SECTIONS 36 to 38. The amendments are consequential upon the re-enactment of various sections of the Act adopting provisions contained in the Federal Act.

Bill 60**1989****An Act to amend the Income Tax Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Income Tax Act*, being chapter 213 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 46, section 1 and 1988, chapter 73, section 1, is further amended by adding thereto the following subsection:

(6) Where a provision (in this subsection referred to as “that section”) of the Federal Act or the Federal Regulations is made applicable for the purposes of this Act, that section, as amended from time to time heretofore or hereafter, applies with such modifications as the circumstances require for the purposes of this Act as though it had been enacted as a provision of this Act and, in applying that section for the purposes of this Act, in addition to any other modifications required by the circumstances,

Modification
of Federal
provisions

- (a) a reference in that section to tax under Part I of the Federal Act shall be read as a reference to tax under this Act;
- (b) where that section contains a reference to tax under any of Parts I.1 to XIV of the Federal Act, that section shall be read without reference therein to tax under any of those Parts and without reference to any portion of that section which applies only to or in respect of tax under any of those Parts;
- (c) a reference in that section to a particular provision of the Federal Act that is the same as or similar to a provision of this Act shall be read as a reference to the provision of this Act;
- (d) a reference in that section to a particular provision of the Federal Act that applies for the purposes of this Act shall be read as a reference to the partic-

ular provision as it applies for the purposes of this Act;

- (e) where that section contains a reference to any of Parts I.1 to XIV of the Federal Act or to a provision in any of those Parts, that section shall be read without reference therein to that Part or without reference to that provision, as the case may be, and without reference to any portion of that section that applies only because of the application of any of those Parts or the application of a provision in any of those Parts;
- (f) where that section contains a reference to the *Bankruptcy Act* (Canada), that section shall be read without reference therein to the *Bankruptcy Act* (Canada);
- (g) a reference in that section to a Federal regulation that applies for the purposes of this Act shall be read as a reference to the regulation as it applies for the purposes of this Act;
- (h) a reference in that section to a word or expression set out in Column 1 of the following Table shall be read as a reference to the word or expression set out opposite thereto in Column 2 of the following Table:

R.S.C. 1985,
c. B-3

TABLE

Column 1	Column 2
Her Majesty	Her Majesty in right of Ontario
Canada	Ontario
Department of National Revenue	Ministry of Revenue
Deputy Minister of National Revenue for Taxation	Deputy Head
Deputy Attorney General of Canada	Deputy Attorney General of Ontario
Tax Court of Canada	Supreme Court of Ontario

<i>Tax Court of Canada Act</i>	<i>Courts of Justice Act, 1984</i>
Federal Court of Canada	Supreme Court of Ontario
<i>Federal Court Act</i>	<i>Courts of Justice Act, 1984</i>
Registrar of the Tax Court of Canada	Registrar of the Supreme Court of Ontario or local Registrar of that Court for the county or district in which the particular taxpayer resides
in the Registry of the Federal Court	with the Registrar of the Supreme Court of Ontario or local Registrar of that Court for the county or district in which the particular taxpayer resides

2.—(1) Clause 3 (5) (m) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is amended by striking out “and” at the end thereof.

(2) Clause 3 (5) (n) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is repealed and the following substituted therefor:

- (n) 52 per cent in respect of the 1989 taxation year; and
- (o) 53 per cent in respect of the 1990 and subsequent taxation years.

(3) Clause 3 (8) (a) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is repealed and the following substituted therefor:

- (a) the amount, if any, by which the non-business income tax paid by the individual for the year to the government of the country other than Canada exceeds,
 - (i) where section 127.5 of the Federal Act does not apply to the individual for the taxation year, all amounts claimed by the individual as deductions from tax under that Act for the year under subsection 126(1) or 180.1(1.1) of that Act, or
 - (ii) where section 127.5 of the Federal Act applies to the individual for the year, the aggregate of,

- (A) the individual's special foreign tax credit for the year determined under section 127.54 of that Act, and
- (B) the amount claimed by the individual as a deduction from tax under that Act for the year under subsection 180.1(1.1) of that Act; and

(4) Subclause 3 (8) (b) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is repealed and the following substituted therefor:

- (i) the amount determined in respect of the individual for the year under subparagraph 126(1)(b)(i) of the Federal Act.

3. Subsection 7 (2c) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 73, section 5, is amended by striking out "and" at the end of clause (a) and by adding thereto the following clauses:

- (c) no amount may be claimed under subclause (2) (b) (i) by an individual in respect of whom another individual has claimed an amount under subclause (2) (b) (iii); and
- (d) no amount may be claimed by an individual under subclause (2) (b) (iii) in respect of an individual who has claimed an amount under subclause (2) (b) (i).

4. Subsections 8 (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Idem

(2) Subsections 150(2) to (4) of the Federal Act apply for the purposes of this Act and, in the application thereof, a reference to subsection 150(1) of the Federal Act shall be read as a reference to subsection (1).

5. Section 9 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 73, section 6, is repealed and the following substituted therefor:

Assessments
and
withholding

9.—(1) Section 151 and subsections 152(1), (2), (3), (4), (4.1), (5), (6), (7) and (8) and 153(1), (1.1), (1.2), (1.3), (1.4) and (2) and (3) of the Federal Act apply for the purposes of this Act and, in the application thereof, any reference therein

to section 150 or to subsection 150(1) of the Federal Act shall be read to include a reference to subsection 8 (1) of this Act.

(2) Where an individual pays tax for a taxation year under the Federal Act computed in accordance with subsection 117(6) of that Act, the individual may pay in lieu of the amount of tax otherwise determined under one or more sections of this Act the amount or amounts determined by reference to one or more tables prepared in accordance with prescribed rules. Tax tables

6. Section 10 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 4, 1985, chapter 12, section 4 and 1986, chapter 40, section 5, is repealed and the following substituted therefor:

10. Where a collection agreement is in effect and the tax payable by a taxpayer for a taxation year under Part I of the Federal Act is reassessed by the Minister, the Provincial Minister shall reassess or make additional assessments or assess tax, interest or penalties, as the circumstances require, notwithstanding that more than three years may have passed since the day of mailing of a notice of an original assessment of tax, interest or penalties payable under this Act by the taxpayer for the taxation year, or of a notification that no tax is payable under this Act by the taxpayer for the year. Reassessments

7. Section 11 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 5 and 1984, chapter 50, section 4, is repealed.

8. Subsection 12 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 50, section 5, is repealed and the following substituted therefor:

(1) Every individual whose chief source of income is farming or fishing, other than an individual to whom subsection 153(2) of the Federal Act applies for the purposes of this Act, shall pay to the Treasurer, Payment of tax by farmers and fishermen

(a) on or before the 31st day of December in each taxation year, two-thirds of,

(i) the amount estimated by the individual under section 151 of the Federal Act, as it applies for the purposes of this Act, to be the tax, payable by the individual under this Act for the taxation year, computed without reference to section 127.3 of the Federal Act, or

- (ii) the tax payable under this Act by the individual for the immediately preceding taxation year; and
- (b) on or before the 30th day of April in the next following year, the remainder of the tax as estimated under section 151 of the Federal Act as it applies for the purposes of this Act.

9. Subsection 13 (1) of the said Act is repealed and the following substituted therefor:

Payment of
tax by other
individuals

(1) Every individual, other than an individual to whom subsection 153(2) of the Federal Act applies for the purposes of this Act or to whom section 12 applies, shall pay to the Treasurer,

- (a) on or before the last days of the months of March, June, September and December in each taxation year ending before the 1st day of January, 1990, and on or before the 15th days of March, June, September and December in each taxation year commencing after the 31st day of December, 1989, an amount equal to one-quarter of,
 - (i) the amount estimated by the individual under section 151 of the Federal Act, as it applies for the purposes of this Act, to be the tax payable by the individual under this Act for the taxation year, computed without reference to section 127.3 of the Federal Act, or
 - (ii) the tax payable by the individual under this Act for the immediately preceding taxation year; and
- (b) on or before the 30th day of April in the next following year, the remainder of the tax as estimated under section 151 of the Federal Act, as it applies for the purposes of this Act.

10. Section 14 of the said Act is repealed and the following substituted therefor:

Returns,
payments and
interest

14. Subsection 70(2), subsection 104(2), paragraph 104(23)(e), sections 158, 159 and 160, subsection 160.1(1), sections 160.2 and 160.3 and subsections 161(1), (2), (2.1), (2.2), (3), (4), (4.1), (5), (6), (6.1), (7), (9) and (11) of the Federal Act apply for the purposes of this Act.

11. The said Act is amended by adding thereto the following section:

14a. Interest computed under any of subsections 161(1), (2) and (11), 164(3), (3.1) and (4) and 227(8.3) and (9.2) of the Federal Act, as they apply for the purposes of this Act, shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid on the day it would, but for this section, have ceased to be computed under that provision, interest at the rate provided by that provision shall be compounded daily on unpaid interest from that day to the day it is paid.

Compound
interest

12. Section 15 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 12, section 7, is repealed and the following substituted therefor:

15. In applying subsection 160.1(1) of the Federal Act for the purposes of this Act, "refund" includes a refund that arises by reason of a provision of this Act which,

Refund of
tax credits

- (a) allows a taxpayer to deduct an amount from the tax payable under this Act; or
- (b) deems an amount to have been paid by a taxpayer as or on account of tax payable under this Act by him or her.

13. Section 16 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 50, section 6, 1985, chapter 12, section 8, 1986, chapter 40, section 6 and 1988, chapter 73, section 7, is repealed and the following substituted therefor:

16. Where a collection agreement is in effect and a taxpayer is deemed under subsection 161(4) of the Federal Act to be liable to pay, in respect of tax payable under Part I of the Federal Act for a particular taxation year, a part or instalment computed by reference to an amount described in paragraph 161(4)(c) or (d) of the Federal Act, the taxpayer shall be deemed for the purposes of subsection 161(2) of the Federal Act, as it applies for the purposes of this Act, to be liable to pay, in respect of tax payable under this Act for the particular year, a part or instalment computed by reference to the same paragraph of subsection 161(4) of the Federal Act, as it applies for the purposes of this Act.

Amount on
which
instalment
computed

14. Section 17 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 7, is repealed and the following substituted therefor:

Penalty for
failure to file
a return

17.—(1) Every person who fails to file a return of income for an individual for a taxation year as and when required by subsection 8 (1) is liable to a penalty equal to the aggregate of,

- (a) an amount equal to 5 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed; and
- (b) the product obtained when 1 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding twelve, from the date on which the return was required to be filed to the date on which the return was filed.

Penalty for
repeated
failure to file
returns

(2) Every person,

- (a) who fails to file a return of income for a taxation year as and when required by subsection 8 (1);
- (b) on whom a demand for a return for the year has been made under subsection 150(2) of the Federal Act, as it applies for the purposes of this Act; and
- (c) who, at the time of failure, had been assessed for a penalty under subsection (1) or this subsection in respect of a return of income for any of the three preceding taxation years,

is liable to a penalty equal to the aggregate of,

- (d) an amount equal to 10 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed; and
- (e) the product obtained when 2 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding twenty, from the date on which the return was required to be filed to the date on which the return was filed.

Idem

(3) Every person who fails to file a return as required by subsection 150(3) of the Federal Act, as it applies for the purposes of this Act, is liable to a penalty of \$10 for each day of default, to a total penalty of \$50.

(4) Every person who fails to provide any information required under this Act or a regulation, or under a provision of the Federal Act or of the Federal Regulations which applies for the purposes of this Act is, except where, in the case of an individual, the Minister has waived the penalty, liable to a penalty of \$100 for every failure unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person.

Failure to
provide
information

(5) Every person who fails,

General
penalty

- (a) to make an information return as and when required under this Act or a regulation, or under a provision of the Federal Act or the Federal Regulations which applies for the purposes of this Act; or
- (b) to comply with a duty or obligation imposed on the person under this Act or a regulation, or under a provision of the Federal Act or Federal Regulations which applies for the purposes of this Act,

is liable in respect of each such failure, except where another provision of this Act sets out a penalty for the failure, to a penalty equal to the greater of \$100 and the product obtained when \$25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

(6) Where a collection agreement is in effect, the Minister may refrain from levying or may reduce a penalty payable under this section if the person who is liable to the penalty is required to pay a penalty under section 162 of the Federal Act in respect of the same failure.

Minister's
discretion
where
collection
agreement in
force

15. Section 18 of the said Act is repealed and the following substituted therefor:

18.—(1) Every person who,

Penalty for
repeated
failure to
report an
amount

- (a) fails to report an amount required to be included in computing income in a return filed for a taxation year under subsection 150(2), (3) or (4) of the Federal Act, as it applies for the purposes of this Act, or subsection 8 (1); and
- (b) has failed to report an amount required to be included in any return filed for any of the three preceding taxation years under subsection 150(2), (3) or (4) of the Federal Act, as it applies for the purposes of this Act, or subsection 8 (1),

is liable to a penalty equal to 10 per cent of the amount described in clause (a), unless the person is liable to a penalty under subsection (2) in respect of that amount.

False
statements or
omissions

(2) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act or a provision of the Federal Act, as it applies for the purposes of this Act, has made or participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a “return”) filed or made in respect of a taxation year as required by or under this Act or a regulation, or a provision of the Federal Act or of the Federal Regulations as that provision applies for the purposes of this Act, is liable to a penalty of the greater of \$100 and 50 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable under this Act if the individual’s taxable income for the year were computed by adding to the taxable income reported in the return for the year that portion of the individual’s understatement of income for the year that is reasonably attributable to the false statement or omission, and if the individual’s tax payable for the year were computed by subtracting from the deductions from the tax otherwise payable for the year the portion of those deductions that may reasonably be attributed to the false statement or omission,

exceeds,

- (b) the tax for the year that would have been payable under this Act had the individual’s tax payable for the year been assessed on the basis of the information provided in the individual’s return for the year.

Interpretation

(3) For the purposes of subsection (2), the taxable income reported by a person in his or her return for a taxation year shall be deemed not to be less than nil and the “understatement of income for a year” of a person has the meaning assigned to that expression by subsection 163(2.1) of the Federal Act.

Burden of
proof

(4) Where, in any appeal under this Act, a penalty assessed by the Minister under this section is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

(5) Where a collection agreement is in effect, the Minister may refrain from levying or may reduce a penalty imposed under this section if the person who is liable to the penalty is required to pay a penalty under section 163 of the Federal Act in respect of the same failure or the same false statement or omission, as the case may be.

Minister's discretion where collection agreement in force

18a. Every person who fails to pay all or any part of an instalment of tax under this Act for a taxation year on or before the day on which the instalment is required to be paid by this Act, or by a provision of the Federal Act that applies for the purposes of this Act, is liable to a penalty equal to 50 per cent of the amount, if any, by which the interest payable by him or her in respect of all instalments for the year under section 161 of the Federal Act, as it applies for the purposes of this Act, exceeds the greater of,

Late or deficient instalments

(a) \$1,000; and

(b) 25 per cent of the interest that would have been payable by him or her in respect of all instalments for the year under section 161 of the Federal Act, as it applies for the purposes of this Act, if no instalments had been made for that year.

16. Section 19 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 12, section 9 and 1986, chapter 40, section 7, is repealed and the following substituted therefor:

19.—(1) Subsections 164(1), (1.1), (1.2), (1.3), (1.31), (2), (3), (3.1), (4), (4.1), (5), (5.1), (6) and (7) of the Federal Act apply for the purposes of this Act.

Refunds

(2) Where a collection agreement is in effect and, by reason of a decision referred to in subsection 164(4.1) of the Federal Act, a repayment of tax, interest or penalties under that Act for a taxation year is made to a taxpayer, or any security accepted under that Act for such tax, interest or penalties is surrendered to the taxpayer, subsection 164(4.1) of the Federal Act, as it applies for the purposes of this Act, applies to any overpayment of tax, interest or penalties under this Act for the taxation year that arises by reason of the decision.

Refund based on Federal refunds

17. Section 20 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 8, is repealed and the following substituted therefor:

20. Section 165 of the Federal Act applies for the purposes of this Act.

Objections to assessments

18. Subsection 21 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 9, is further amended,

- (a) by striking out “subsection 20 (1)” in the second line and inserting in lieu thereof “subsection 165(1) of the Federal Act, as it applies for the purposes of this Act,”; and
- (b) by striking out “subsection 20 (3)” in the thirteenth line and inserting in lieu thereof “subsection 165(3) of the Federal Act, as it applies for the purposes of this Act,”.

19. Section 24 of the said Act is repealed and the following substituted therefor:

Proceedings
in camera,
irregularities
in
assessments

24. Sections 166, 167 and 179 of the Federal Act apply for the purposes of this Act.

20. Section 26 of the said Act is repealed.

21. Section 27 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 10, is repealed and the following substituted therefor:

Administra-
tion,
garnishment,
collection

27. Sections 220, 224, 225.1 and 225.2 of the Federal Act apply for the purposes of this Act.

22. Section 31 of the said Act is repealed and the following substituted therefor:

Certificate of
amount
payable

31.—(1) An amount payable under this Act by a person (in this section referred to as a “debtor”) that has not been paid, or any part of an amount payable under this Act by the debtor that has not been paid, may be certified by the Minister as an amount payable by the debtor.

Registration
of certificate
in court

(2) On production to the Supreme Court, a certificate made under subsection (1) in respect of a debtor shall be registered in the court and when so registered has the same effect, and all proceedings may be taken thereon as if the certificate were a judgment obtained in the court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by law and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the court against the debtor for a debt due to Her Majesty in right of Ontario, enforceable in the amount certified plus interest thereon to the day of payment as provided by law.

(3) All reasonable costs and charges incurred or paid in respect of the registration in the court of a certificate made under subsection (1) or in respect of any proceedings taken to collect an amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered. Costs

(4) Where a collection agreement is in effect, subsections (1) to (3) do not apply, but the Minister may proceed under section 223 of the Federal Act for the purpose of collecting any amount payable under this Act by a taxpayer. Proceeding under section 223 of Federal Act

23. Section 33 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 8 and 1984, chapter 50, section 7, is repealed.

24. Section 34 of the said Act is repealed and the following substituted therefor:

34.—(1) Where a person has failed to pay an amount as required by this Act, the Minister, by registered mail addressed to the person's last known address, may give thirty days notice to the person of the Minister's intention to direct that the person's goods and chattels be seized and sold, and, if the person fails to make the payment before the expiration of the thirty days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels that are located in the Province of Ontario be seized. Direction to seize chattels

(2) Subsections 225(2), (3), (4) and (5) of the Federal Act apply for the purposes of this Act. Idem

25. Subsection 35 (2) of the said Act is amended by striking out "subsections 34 (2) to (5) are thereupon applicable with necessary modifications" in the fifth and sixth lines and inserting in lieu thereof "thereupon subsections 225(2), (3), (4) and (5) of the Federal Act apply".

26.—(1) Subsection 36 (1) of the said Act is repealed and the following substituted therefor:

(1) Subsections 227(1), (2), (3), (4), (5), (8), (8.2), (8.3), (8.4), (8.5), (9), (9.2), (9.4) and (9.5) of the Federal Act apply for the purposes of this Act. Moneys withheld

(2) Subsections 36 (2) and (3) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 46, section 9, are repealed.

(3) Subsections 36 (4) and (5) of the said Act are repealed.

(4) Subsection 36 (6) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 11, is repealed.

(5) Subsection 36 (7) of the said Act is repealed.

(6) Subsection 36 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 12, section 11, is repealed and the following substituted therefor:

Assessment

(8) The Minister may assess,

- (a) any person for any amount that has been deducted or withheld by that person under this Act or a regulation made under this Act, or under a provision of the Federal Act or of the Federal Regulations that applies for the purposes of this Act; and**
- (b) any person for any amount payable by that person under subsection 224(4) or (4.1) or 227(8), (8.3), (8.4), (8.5), (9), (9.2), (9.4) or (9.5) of the Federal Act as they apply for the purposes of this Act, or section 36a or 41 of this Act.**

Application
of ss. 9, 14-
25

(8a) Section 9 and sections 14 to 25 apply with necessary modifications where the Minister sends a notice of assessment to a person mentioned in subsection (8).

27. Subsection 36a (1) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 50, section 9, is amended by striking out “section 11” in the second line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

28.—(1) Subsection 37 (2) of the said Act is repealed and the following substituted therefor:

Books and
records

(2) Subsections 230(2.1), (3), (4), (5), (6), (7) and (8) of the Federal Act apply for the purposes of this Act and, in the application thereof, any reference to subsection 230(1) of the Federal Act shall be read as a reference to subsection (1).

(2) Subsection 37 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 50, section 10, is repealed.

29. Sections 38 and 39 of the said Act are repealed and the following substituted therefor:

Inspections,
privilege,
information
returns and
corporate
execution
R.S.O. 1980,
c. 400

38.—(1) Sections 231 to 231.5, 232, 233 and 236 of the Federal Act and sections 142 to 144 of the *Provincial Offences Act* apply for the purposes of this Act.

(2) Where a warrant is issued under section 142 of the *Provincial Offences Act*, the provisions of sections 142 to 144 of that Act, and not sections 231 to 231.5 and 232 of the Federal Act, apply for the purposes of this Act. Idem

30. Section 40 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 46, section 10, is repealed.

31. Section 42 of the said Act is repealed.

32. Section 43 of the said Act is repealed and the following substituted therefor:

43.—(1) Every person is guilty of an offence who, Offence

- (a) fails to file a return as and when required by or under this Act or a regulation, or by or under a provision of the Federal Act or of the Federal Regulations as the provision applies for the purposes of this Act;
- (b) fails to comply with any of subsections 153(1), 227(5) and 230(3), (4) and (5) and sections 231 to 231.5 and 232 of the Federal Act, as they apply for the purposes of this Act; or
- (c) fails to comply with subsection 37 (1).

(2) Every person who is guilty of an offence under subsection (1) is liable on conviction, in addition to any penalty otherwise provided, to a fine of not less than \$1,000 and not more than \$25,000. Penalty

(3) A court that convicts a person of an offence under subsection (1) for failure to comply with a provision of this Act or a regulation, or a provision of the Federal Act or of the Federal Regulations that applies for the purposes of this Act, may make such order as the court considers proper in order to enforce compliance with the provision. Compliance order

(4) A person convicted under this section for failure to comply with a provision of this Act or a regulation, or a provision of the Federal Act or of the Federal Regulations that applies for the purposes of this Act, is not liable to a penalty under subsection 227(8), (8.5), (9) or (9.5) of the Federal Act, as those subsections apply for the purposes of this Act, or under section 17 or 41 for the same failure unless the person was assessed for that penalty or that penalty was demanded from the person before the information or complaint giving rise to the conviction was laid or made. Saving

33.—(1) Clauses 44 (a) and (b) of the said Act are repealed and the following substituted therefor:

- (a) made, or participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation or by or under a provision of the Federal Act or of the Federal Regulations as that provision applies for the purposes of this Act;
- (b) destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer for the purpose of attempting to,
 - (i) evade the payment of tax imposed by this Act, or
 - (ii) obtain a tax credit under section 7 in excess of the amount, if any, otherwise deductible or payable, as the case may be, under section 7.

(2) Clause 44 (f) of the said Act is repealed and the following substituted therefor:

- (f) a fine of not less than 50 per cent and not more than 200 per cent of the amount of the tax that was sought to be evaded or the tax credit that was sought to be obtained, as applicable; or

.

34.—(1) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

Offence,
secrecy

(1) Every person is guilty of an offence who, while employed directly or indirectly in the administration of this Act or in the development and evaluation of tax policy for the Government of Ontario,

- (a) knowingly communicates or knowingly allows to be communicated to any person not legally entitled thereto any information obtained under this Act;
- (b) knowingly allows any person not legally entitled thereto to inspect or to have access to any book, record, writing, return or other document obtained under this Act; or

- (c) knowingly uses, other than in the course of his or her duties in connection with the administration or enforcement of this Act, or in the development and evaluation of tax policy for the Government of Ontario, any information obtained under this Act.

(1a) Every person who is guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment. Penalty

(2) Subsection 46 (2) of the said Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding thereto the following clause:

- (c) the Provincial Minister and the Treasurer of Ontario as may be required in connection with the development and evaluation of tax policy for the Government of Ontario.

35.—(1) Subsection 49 (3) of the said Act is repealed and the following substituted therefor:

(3) An information or complaint under the *Provincial Offences Act* in respect of an offence under this Act may be laid or made on or before the day that is eight years after the day on which the subject-matter of the information or complaint arose. Limitation
R.S.O. 1980,
c. 400

(2) Subsection 49 (12) of the said Act is repealed and the following substituted therefor:

(12) For the purposes of this Act, the day of mailing of any notice or notification described in subsection 152(4) of the Federal Act as it applies for the purposes of this Act or of any notice of assessment shall be presumed to be the date of such notice or notification. Day of
mailing

(12a) For the purposes of this Act, anything sent by first class mail or its equivalent shall be deemed to have been received by the person to whom it is sent on the day that it was mailed, except that a remittance of an amount deducted or withheld as required by this Act or a regulation, or by a provision of the Federal Act or of the Federal Regulations as it applies for the purposes of this Act, shall be deemed to have been remitted on the day it is received by the Treasurer. Day of
receipt

36. Section 53 of the said Act is amended by striking out “section 11” in the second line and inserting in lieu thereof

“subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

37. Subsection 54 (2) of the said Act is amended by striking out “section 19 of this Act” in the sixth line and inserting in lieu thereof “subsections 164(1), (2) and (3) of the Federal Act, as they apply for the purposes of this Act,”.

38.—(1) Subsection 55 (4) of the said Act is amended by striking out “section 11” in the third line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

(2) Subsection 55 (5) of the said Act is amended by striking out “section 11” in the second line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

(3) Subsection 55 (7) of the said Act is amended by striking out “section 19 of this Act” in the eighth and ninth lines and inserting in lieu thereof “subsections 164(1), (2) and (3) of the Federal Act, as they apply for the purposes of this Act,”.

(4) Subsection 55 (8) of the said Act is amended by striking out “section 11” in the fifteenth line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

Application
of certain
sections

39.—(1) Clause 3 (8) (a) and subclause 3 (8) (b) (i) of the said Act, as re-enacted by subsections 2 (3) and (4), apply in respect of taxation years ending after the 31st day of December, 1985.

Idem

(2) Interest computed under section 14a of the said Act, as enacted by section 11, in respect of a period ending before the 1st day of January, 1987 shall be compounded after the 31st day of December, 1986.

Idem

(3) Clauses 7 (2c) (c) and (d) of the said Act, as enacted by section 3 of this Act, apply in respect of taxation years ending after the 31st day of December, 1987.

Commence-
ment

40.—(1) Except as provided in subsections (2) to (7), this Act comes into force on the day it receives Royal Assent.

Idem

(2) Section 16 shall be deemed to have come into force on the 1st day of January, 1985.

Idem

(3) Sections 10, 12 and 13 shall be deemed to have come into force on the 28th day of October, 1985.

(4) Subsections 2 (3) and (4) shall be deemed to have come into force on the 1st day of January, 1986. Idem

(5) Section 11 shall be deemed to have come into force on the 1st day of January, 1987. Idem

(6) Section 3 shall be deemed to have come into force on the 1st day of January, 1988. Idem

(7) Subsections 2 (1) and (2) come into force on the 1st day of January, 1990. Idem

41. The short title of this Act is the *Income Tax Amendment Act, 1989*. Short title

Bill 60

(Chapter 91
Statutes of Ontario, 1989)

An Act to amend the Income Tax Act

The Hon. R. Mancini
Minister of Revenue



<i>1st Reading</i>	October 11th, 1989
<i>2nd Reading</i>	December 20th, 1989
<i>3rd Reading</i>	December 20th, 1989
<i>Royal Assent</i>	December 20th, 1989

Bill 60**1989****An Act to amend the Income Tax Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Income Tax Act*, being chapter 213 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 46, section 1 and 1988, chapter 73, section 1, is further amended by adding thereto the following subsection:

(6) Where a provision (in this subsection referred to as “that section”) of the Federal Act or the Federal Regulations is made applicable for the purposes of this Act, that section, as amended from time to time heretofore or hereafter, applies with such modifications as the circumstances require for the purposes of this Act as though it had been enacted as a provision of this Act and, in applying that section for the purposes of this Act, in addition to any other modifications required by the circumstances,

Modification
of Federal
provisions

- (a) a reference in that section to tax under Part I of the Federal Act shall be read as a reference to tax under this Act;
- (b) where that section contains a reference to tax under any of Parts I.1 to XIV of the Federal Act, that section shall be read without reference therein to tax under any of those Parts and without reference to any portion of that section which applies only to or in respect of tax under any of those Parts;
- (c) a reference in that section to a particular provision of the Federal Act that is the same as or similar to a provision of this Act shall be read as a reference to the provision of this Act;
- (d) a reference in that section to a particular provision of the Federal Act that applies for the purposes of this Act shall be read as a reference to the partic-

ular provision as it applies for the purposes of this Act;

R.S.C. 1985,
c. B-3

- (e) where that section contains a reference to any of Parts I.1 to XIV of the Federal Act or to a provision in any of those Parts, that section shall be read without reference therein to that Part or without reference to that provision, as the case may be, and without reference to any portion of that section that applies only because of the application of any of those Parts or the application of a provision in any of those Parts;
- (f) where that section contains a reference to the *Bankruptcy Act* (Canada), that section shall be read without reference therein to the *Bankruptcy Act* (Canada);
- (g) a reference in that section to a Federal regulation that applies for the purposes of this Act shall be read as a reference to the regulation as it applies for the purposes of this Act;
- (h) a reference in that section to a word or expression set out in Column 1 of the following Table shall be read as a reference to the word or expression set out opposite thereto in Column 2 of the following Table:

TABLE

Column 1	Column 2
Her Majesty	Her Majesty in right of Ontario
Canada	Ontario
Department of National Revenue	Ministry of Revenue
Deputy Minister of National Revenue for Taxation	Deputy Head
Deputy Attorney General of Canada	Deputy Attorney General of Ontario
Tax Court of Canada	Supreme Court of Ontario

<i>Tax Court of Canada Act</i>	<i>Courts of Justice Act, 1984</i>
Federal Court of Canada	Supreme Court of Ontario
<i>Federal Court Act</i>	<i>Courts of Justice Act, 1984</i>
Registrar of the Tax Court of Canada	Registrar of the Supreme Court of Ontario or local Registrar of that Court for the county or district in which the particular taxpayer resides
in the Registry of the Federal Court	with the Registrar of the Supreme Court of Ontario or local Registrar of that Court for the county or district in which the particular taxpayer resides

2.—(1) Clause 3 (5) (m) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is amended by striking out “and” at the end thereof.

(2) Clause 3 (5) (n) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is repealed and the following substituted therefor:

- (n) 52 per cent in respect of the 1989 taxation year; and
- (o) 53 per cent in respect of the 1990 and subsequent taxation years.

(3) Clause 3 (8) (a) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is repealed and the following substituted therefor:

- (a) the amount, if any, by which the non-business income tax paid by the individual for the year to the government of the country other than Canada exceeds,
 - (i) where section 127.5 of the Federal Act does not apply to the individual for the taxation year, all amounts claimed by the individual as deductions from tax under that Act for the year under subsection 126(1) or 180.1(1.1) of that Act, or
 - (ii) where section 127.5 of the Federal Act applies to the individual for the year, the aggregate of,

- (A) the individual's special foreign tax credit for the year determined under section 127.54 of that Act, and
- (B) the amount claimed by the individual as a deduction from tax under that Act for the year under subsection 180.1(1.1) of that Act; and

(4) Subclause 3 (8) (b) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 73, section 3, is repealed and the following substituted therefor:

- (i) the amount determined in respect of the individual for the year under subparagraph 126(1)(b)(i) of the Federal Act.

3. Subsection 7 (2c) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 73, section 5, is amended by striking out "and" at the end of clause (a) and by adding thereto the following clauses:

- (c) no amount may be claimed under subclause (2) (b) (i) by an individual in respect of whom another individual has claimed an amount under subclause (2) (b) (iii); and
- (d) no amount may be claimed by an individual under subclause (2) (b) (iii) in respect of an individual who has claimed an amount under subclause (2) (b) (i).

4. Subsections 8 (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Idem

(2) Subsections 150(2) to (4) of the Federal Act apply for the purposes of this Act and, in the application thereof, a reference to subsection 150(1) of the Federal Act shall be read as a reference to subsection (1).

5. Section 9 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 73, section 6, is repealed and the following substituted therefor:

Assessments
and
withholding

9.—(1) Section 151 and subsections 152(1), (2), (3), (4), (4.1), (5), (6), (7) and (8) and 153(1), (1.1), (1.2), (1.3), (1.4) and (2) and (3) of the Federal Act apply for the purposes of this Act and, in the application thereof, any reference therein

to section 150 or to subsection 150(1) of the Federal Act shall be read to include a reference to subsection 8 (1) of this Act.

(2) Where an individual pays tax for a taxation year under the Federal Act computed in accordance with subsection 117(6) of that Act, the individual may pay in lieu of the amount of tax otherwise determined under one or more sections of this Act the amount or amounts determined by reference to one or more tables prepared in accordance with prescribed rules. Tax tables

6. Section 10 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 4, 1985, chapter 12, section 4 and 1986, chapter 40, section 5, is repealed and the following substituted therefor:

10. Where a collection agreement is in effect and the tax payable by a taxpayer for a taxation year under Part I of the Federal Act is reassessed by the Minister, the Provincial Minister shall reassess or make additional assessments or assess tax, interest or penalties, as the circumstances require, notwithstanding that more than three years may have passed since the day of mailing of a notice of an original assessment of tax, interest or penalties payable under this Act by the taxpayer for the taxation year, or of a notification that no tax is payable under this Act by the taxpayer for the year. Reassessments

7. Section 11 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 5 and 1984, chapter 50, section 4, is repealed.

8. Subsection 12 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 50, section 5, is repealed and the following substituted therefor:

(1) Every individual whose chief source of income is farming or fishing, other than an individual to whom subsection 153(2) of the Federal Act applies for the purposes of this Act, shall pay to the Treasurer, Payment of tax by farmers and fishermen

(a) on or before the 31st day of December in each taxation year, two-thirds of,

(i) the amount estimated by the individual under section 151 of the Federal Act, as it applies for the purposes of this Act, to be the tax payable by the individual under this Act for the taxation year, computed without reference to section 127.3 of the Federal Act, or

- (ii) the tax payable under this Act by the individual for the immediately preceding taxation year; and
- (b) on or before the 30th day of April in the next following year, the remainder of the tax as estimated under section 151 of the Federal Act as it applies for the purposes of this Act.

9. Subsection 13 (1) of the said Act is repealed and the following substituted therefor:

Payment of
tax by other
individuals

(1) Every individual, other than an individual to whom subsection 153(2) of the Federal Act applies for the purposes of this Act or to whom section 12 applies, shall pay to the Treasurer,

- (a) on or before the last days of the months of March, June, September and December in each taxation year ending before the 1st day of January, 1990, and on or before the 15th days of March, June, September and December in each taxation year commencing after the 31st day of December, 1989, an amount equal to one-quarter of,
 - (i) the amount estimated by the individual under section 151 of the Federal Act, as it applies for the purposes of this Act, to be the tax payable by the individual under this Act for the taxation year, computed without reference to section 127.3 of the Federal Act, or
 - (ii) the tax payable by the individual under this Act for the immediately preceding taxation year; and
- (b) on or before the 30th day of April in the next following year, the remainder of the tax as estimated under section 151 of the Federal Act, as it applies for the purposes of this Act.

10. Section 14 of the said Act is repealed and the following substituted therefor:

Returns,
payments and
interest

14. Subsection 70(2), subsection 104(2), paragraph 104(23)(e), sections 158, 159 and 160, subsection 160.1(1), sections 160.2 and 160.3 and subsections 161(1), (2), (2.1), (2.2), (3), (4), (4.1), (5), (6), (6.1), (7), (9) and (11) of the Federal Act apply for the purposes of this Act.

11. The said Act is amended by adding thereto the following section:

14a. Interest computed under any of subsections 161(1), (2) and (11), 164(3), (3.1) and (4) and 227(8.3) and (9.2) of the Federal Act, as they apply for the purposes of this Act, shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid on the day it would, but for this section, have ceased to be computed under that provision, interest at the rate provided by that provision shall be compounded daily on unpaid interest from that day to the day it is paid.

Compound
interest

12. Section 15 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 12, section 7, is repealed and the following substituted therefor:

15. In applying subsection 160.1(1) of the Federal Act for the purposes of this Act, "refund" includes a refund that arises by reason of a provision of this Act which,

Refund of
tax credits

- (a) allows a taxpayer to deduct an amount from the tax payable under this Act; or
- (b) deems an amount to have been paid by a taxpayer as or on account of tax payable under this Act by him or her.

13. Section 16 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 50, section 6, 1985, chapter 12, section 8, 1986, chapter 40, section 6 and 1988, chapter 73, section 7, is repealed and the following substituted therefor:

16. Where a collection agreement is in effect and a taxpayer is deemed under subsection 161(4) of the Federal Act to be liable to pay, in respect of tax payable under Part I of the Federal Act for a particular taxation year, a part or instalment computed by reference to an amount described in paragraph 161(4)(c) or (d) of the Federal Act, the taxpayer shall be deemed for the purposes of subsection 161(2) of the Federal Act, as it applies for the purposes of this Act, to be liable to pay, in respect of tax payable under this Act for the particular year, a part or instalment computed by reference to the same paragraph of subsection 161(4) of the Federal Act, as it applies for the purposes of this Act.

Amount on
which
instalment
computed

14. Section 17 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 7, is repealed and the following substituted therefor:

Penalty for
failure to file
a return

17.—(1) Every person who fails to file a return of income for an individual for a taxation year as and when required by subsection 8 (1) is liable to a penalty equal to the aggregate of,

- (a) an amount equal to 5 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed; and
- (b) the product obtained when 1 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding twelve, from the date on which the return was required to be filed to the date on which the return was filed.

Penalty for
repeated
failure to file
returns

(2) Every person,

- (a) who fails to file a return of income for a taxation year as and when required by subsection 8 (1);
- (b) on whom a demand for a return for the year has been made under subsection 150(2) of the Federal Act, as it applies for the purposes of this Act; and
- (c) who, at the time of failure, had been assessed for a penalty under subsection (1) or this subsection in respect of a return of income for any of the three preceding taxation years,

is liable to a penalty equal to the aggregate of,

- (d) an amount equal to 10 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed; and
- (e) the product obtained when 2 per cent of the individual's tax for the year under this Act that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding twenty, from the date on which the return was required to be filed to the date on which the return was filed.

Idem

(3) Every person who fails to file a return as required by subsection 150(3) of the Federal Act, as it applies for the purposes of this Act, is liable to a penalty of \$10 for each day of default, to a total penalty of \$50.

(4) Every person who fails to provide any information required under this Act or a regulation, or under a provision of the Federal Act or of the Federal Regulations which applies for the purposes of this Act is, except where, in the case of an individual, the Minister has waived the penalty, liable to a penalty of \$100 for every failure unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person.

Failure to
provide
information

(5) Every person who fails,

General
penalty

- (a) to make an information return as and when required under this Act or a regulation, or under a provision of the Federal Act or the Federal Regulations which applies for the purposes of this Act; or
- (b) to comply with a duty or obligation imposed on the person under this Act or a regulation, or under a provision of the Federal Act or Federal Regulations which applies for the purposes of this Act,

is liable in respect of each such failure, except where another provision of this Act sets out a penalty for the failure, to a penalty equal to the greater of \$100 and the product obtained when \$25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

(6) Where a collection agreement is in effect, the Minister may refrain from levying or may reduce a penalty payable under this section if the person who is liable to the penalty is required to pay a penalty under section 162 of the Federal Act in respect of the same failure.

Minister's
discretion
where
collection
agreement in
force

15. Section 18 of the said Act is repealed and the following substituted therefor:

18.—(1) Every person who,

Penalty for
repeated
failure to
report an
amount

- (a) fails to report an amount required to be included in computing income in a return filed for a taxation year under subsection 150(2), (3) or (4) of the Federal Act, as it applies for the purposes of this Act, or subsection 8 (1); and
- (b) has failed to report an amount required to be included in any return filed for any of the three preceding taxation years under subsection 150(2), (3) or (4) of the Federal Act, as it applies for the purposes of this Act, or subsection 8 (1),

is liable to a penalty equal to 10 per cent of the amount described in clause (a), unless the person is liable to a penalty under subsection (2) in respect of that amount.

False
statements or
omissions

(2) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act or a provision of the Federal Act, as it applies for the purposes of this Act, has made or participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a “return”) filed or made in respect of a taxation year as required by or under this Act or a regulation, or a provision of the Federal Act or of the Federal Regulations as that provision applies for the purposes of this Act, is liable to a penalty of the greater of \$100 and 50 per cent of the amount, if any, by which,

- (a) the tax for the year that would be payable under this Act if the individual’s taxable income for the year were computed by adding to the taxable income reported in the return for the year that portion of the individual’s understatement of income for the year that is reasonably attributable to the false statement or omission, and if the individual’s tax payable for the year were computed by subtracting from the deductions from the tax otherwise payable for the year the portion of those deductions that may reasonably be attributed to the false statement or omission,

exceeds,

- (b) the tax for the year that would have been payable under this Act had the individual’s tax payable for the year been assessed on the basis of the information provided in the individual’s return for the year.

Interpretation

(3) For the purposes of subsection (2), the taxable income reported by a person in his or her return for a taxation year shall be deemed not to be less than nil and the “understatement of income for a year” of a person has the meaning assigned to that expression by subsection 163(2.1) of the Federal Act.

Burden of
proof

(4) Where, in any appeal under this Act, a penalty assessed by the Minister under this section is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

(5) Where a collection agreement is in effect, the Minister may refrain from levying or may reduce a penalty imposed under this section if the person who is liable to the penalty is required to pay a penalty under section 163 of the Federal Act in respect of the same failure or the same false statement or omission, as the case may be.

Minister's discretion where collection agreement in force

18a. Every person who fails to pay all or any part of an instalment of tax under this Act for a taxation year on or before the day on which the instalment is required to be paid by this Act, or by a provision of the Federal Act that applies for the purposes of this Act, is liable to a penalty equal to 50 per cent of the amount, if any, by which the interest payable by him or her in respect of all instalments for the year under section 161 of the Federal Act, as it applies for the purposes of this Act, exceeds the greater of,

Late or deficient instalments

(a) \$1,000; and

(b) 25 per cent of the interest that would have been payable by him or her in respect of all instalments for the year under section 161 of the Federal Act, as it applies for the purposes of this Act, if no instalments had been made for that year.

16. Section 19 of the said Act, as amended by the Statutes of Ontario, 1985, chapter 12, section 9 and 1986, chapter 40, section 7, is repealed and the following substituted therefor:

19.—(1) Subsections 164(1), (1.1), (1.2), (1.3), (1.31), (2), (3), (3.1), (4), (4.1), (5), (5.1), (6) and (7) of the Federal Act apply for the purposes of this Act.

Refunds

(2) Where a collection agreement is in effect and, by reason of a decision referred to in subsection 164(4.1) of the Federal Act, a repayment of tax, interest or penalties under that Act for a taxation year is made to a taxpayer, or any security accepted under that Act for such tax, interest or penalties is surrendered to the taxpayer, subsection 164(4.1) of the Federal Act, as it applies for the purposes of this Act, applies to any overpayment of tax, interest or penalties under this Act for the taxation year that arises by reason of the decision.

Refund based on Federal refunds

17. Section 20 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 8, is repealed and the following substituted therefor:

20. Section 165 of the Federal Act applies for the purposes of this Act.

Objections to assessments

18. Subsection 21 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 9, is further amended,

- (a) by striking out “subsection 20 (1)” in the second line and inserting in lieu thereof “subsection 165(1) of the Federal Act, as it applies for the purposes of this Act,”; and
- (b) by striking out “subsection 20 (3)” in the thirteenth line and inserting in lieu thereof “subsection 165(3) of the Federal Act, as it applies for the purposes of this Act,”.

19. Section 24 of the said Act is repealed and the following substituted therefor:

Proceedings
in camera,
irregularities
in
assessments

24. Sections 166, 167 and 179 of the Federal Act apply for the purposes of this Act.

20. Section 26 of the said Act is repealed.

21. Section 27 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 10, is repealed and the following substituted therefor:

Administra-
tion,
garnishment,
collection

27. Sections 220, 224, 225.1 and 225.2 of the Federal Act apply for the purposes of this Act.

22. Section 31 of the said Act is repealed and the following substituted therefor:

Certificate of
amount
payable

31.—(1) An amount payable under this Act by a person (in this section referred to as a “debtor”) that has not been paid, or any part of an amount payable under this Act by the debtor that has not been paid, may be certified by the Minister as an amount payable by the debtor.

Registration
of certificate
in court

(2) On production to the Supreme Court, a certificate made under subsection (1) in respect of a debtor shall be registered in the court and when so registered has the same effect, and all proceedings may be taken thereon as if the certificate were a judgment obtained in the court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by law and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the court against the debtor for a debt due to Her Majesty in right of Ontario, enforceable in the amount certified plus interest thereon to the day of payment as provided by law.

(3) All reasonable costs and charges incurred or paid in respect of the registration in the court of a certificate made under subsection (1) or in respect of any proceedings taken to collect an amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered. Costs

(4) Where a collection agreement is in effect, subsections (1) to (3) do not apply, but the Minister may proceed under section 223 of the Federal Act for the purpose of collecting any amount payable under this Act by a taxpayer. Proceeding under section 223 of Federal Act

23. Section 33 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 8 and 1984, chapter 50, section 7, is repealed.

24. Section 34 of the said Act is repealed and the following substituted therefor:

34.—(1) Where a person has failed to pay an amount as required by this Act, the Minister, by registered mail addressed to the person's last known address, may give thirty days notice to the person of the Minister's intention to direct that the person's goods and chattels be seized and sold, and, if the person fails to make the payment before the expiration of the thirty days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels that are located in the Province of Ontario be seized. Direction to seize chattels

(2) Subsections 225(2), (3), (4) and (5) of the Federal Act apply for the purposes of this Act. Idem

25. Subsection 35 (2) of the said Act is amended by striking out "subsections 34 (2) to (5) are thereupon applicable with necessary modifications" in the fifth and sixth lines and inserting in lieu thereof "thereupon subsections 225(2), (3), (4) and (5) of the Federal Act apply".

26.—(1) Subsection 36 (1) of the said Act is repealed and the following substituted therefor:

(1) Subsections 227(1), (2), (3), (4), (5), (8), (8.2), (8.3), (8.4), (8.5), (9), (9.2), (9.4) and (9.5) of the Federal Act apply for the purposes of this Act. Moneys withheld

(2) Subsections 36 (2) and (3) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 46, section 9, are repealed.

(3) Subsections 36 (4) and (5) of the said Act are repealed.

(4) Subsection 36 (6) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 40, section 11, is repealed.

(5) Subsection 36 (7) of the said Act is repealed.

(6) Subsection 36 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1985, chapter 12, section 11, is repealed and the following substituted therefor:

Assessment

(8) The Minister may assess,

- (a) any person for any amount that has been deducted or withheld by that person under this Act or a regulation made under this Act, or under a provision of the Federal Act or of the Federal Regulations that applies for the purposes of this Act; and
- (b) any person for any amount payable by that person under subsection 224(4) or (4.1) or 227(8), (8.3), (8.4), (8.5), (9), (9.2), (9.4) or (9.5) of the Federal Act as they apply for the purposes of this Act, or section 36a or 41 of this Act.

Application
of ss. 9, 14-
25

(8a) Section 9 and sections 14 to 25 apply with necessary modifications where the Minister sends a notice of assessment to a person mentioned in subsection (8).

27. Subsection 36a (1) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 50, section 9, is amended by striking out “section 11” in the second line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

28.—(1) Subsection 37 (2) of the said Act is repealed and the following substituted therefor:

Books and
records

(2) Subsections 230(2.1); (3), (4), (5), (6), (7) and (8) of the Federal Act apply for the purposes of this Act and, in the application thereof, any reference to subsection 230(1) of the Federal Act shall be read as a reference to subsection (1).

(2) Subsection 37 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 50, section 10, is repealed.

29. Sections 38 and 39 of the said Act are repealed and the following substituted therefor:

Inspections,
privilege,
information
returns and
corporate
execution
R.S.O. 1980,
c. 400

38.—(1) Sections 231 to 231.5, 232, 233 and 236 of the Federal Act and sections 142 to 144 of the *Provincial Offences Act* apply for the purposes of this Act.

(2) Where a warrant is issued under section 142 of the *Provincial Offences Act*, the provisions of sections 142 to 144 of that Act, and not sections 231 to 231.5 and 232 of the Federal Act, apply for the purposes of this Act. Idem

30. Section 40 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 46, section 10, is repealed.

31. Section 42 of the said Act is repealed.

32. Section 43 of the said Act is repealed and the following substituted therefor:

43.—(1) Every person is guilty of an offence who, Offence

- (a) fails to file a return as and when required by or under this Act or a regulation, or by or under a provision of the Federal Act or of the Federal Regulations as the provision applies for the purposes of this Act;
- (b) fails to comply with any of subsections 153(1), 227(5) and 230(3), (4) and (5) and sections 231 to 231.5 and 232 of the Federal Act, as they apply for the purposes of this Act; or
- (c) fails to comply with subsection 37 (1).

(2) Every person who is guilty of an offence under subsection (1) is liable on conviction, in addition to any penalty otherwise provided, to a fine of not less than \$1,000 and not more than \$25,000. Penalty

(3) A court that convicts a person of an offence under subsection (1) for failure to comply with a provision of this Act or a regulation, or a provision of the Federal Act or of the Federal Regulations that applies for the purposes of this Act, may make such order as the court considers proper in order to enforce compliance with the provision. Compliance order

(4) A person convicted under this section for failure to comply with a provision of this Act or a regulation, or a provision of the Federal Act or of the Federal Regulations that applies for the purposes of this Act, is not liable to a penalty under subsection 227(8), (8.5), (9) or (9.5) of the Federal Act, as those subsections apply for the purposes of this Act, or under section 17 or 41 for the same failure unless the person was assessed for that penalty or that penalty was demanded from the person before the information or complaint giving rise to the conviction was laid or made. Saving

33.—(1) Clauses 44 (a) and (b) of the said Act are repealed and the following substituted therefor:

- (a) made, or participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation or by or under a provision of the Federal Act or of the Federal Regulations as that provision applies for the purposes of this Act;
- (b) destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a taxpayer for the purpose of attempting to,
 - (i) evade the payment of tax imposed by this Act, or
 - (ii) obtain a tax credit under section 7 in excess of the amount, if any, otherwise deductible or payable, as the case may be, under section 7.

(2) Clause 44 (f) of the said Act is repealed and the following substituted therefor:

- (f) a fine of not less than 50 per cent and not more than 200 per cent of the amount of the tax that was sought to be evaded or the tax credit that was sought to be obtained, as applicable; or

.

34.—(1) Subsection 46 (1) of the said Act is repealed and the following substituted therefor:

Offence,
secrecy

(1) Every person is guilty of an offence who, while employed directly or indirectly in the administration of this Act or in the development and evaluation of tax policy for the Government of Ontario,

- (a) knowingly communicates or knowingly allows to be communicated to any person not legally entitled thereto any information obtained under this Act;
- (b) knowingly allows any person not legally entitled thereto to inspect or to have access to any book, record, writing, return or other document obtained under this Act; or

- (c) knowingly uses, other than in the course of his or her duties in connection with the administration or enforcement of this Act, or in the development and evaluation of tax policy for the Government of Ontario, any information obtained under this Act.

(1a) Every person who is guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment. Penalty

(2) Subsection 46 (2) of the said Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding thereto the following clause:

- (c) the Provincial Minister and the Treasurer of Ontario as may be required in connection with the development and evaluation of tax policy for the Government of Ontario.

35.—(1) Subsection 49 (3) of the said Act is repealed and the following substituted therefor:

(3) An information or complaint under the *Provincial Offences Act* in respect of an offence under this Act may be laid or made on or before the day that is eight years after the day on which the subject-matter of the information or complaint arose. Limitation
R.S.O. 1980,
c. 400

(2) Subsection 49 (12) of the said Act is repealed and the following substituted therefor:

(12) For the purposes of this Act, the day of mailing of any notice or notification described in subsection 152(4) of the Federal Act as it applies for the purposes of this Act or of any notice of assessment shall be presumed to be the date of such notice or notification. Day of
mailing

(12a) For the purposes of this Act, anything sent by first class mail or its equivalent shall be deemed to have been received by the person to whom it is sent on the day that it was mailed, except that a remittance of an amount deducted or withheld as required by this Act or a regulation, or by a provision of the Federal Act or of the Federal Regulations as it applies for the purposes of this Act, shall be deemed to have been remitted on the day it is received by the Treasurer. Day of
receipt

36. Section 53 of the said Act is amended by striking out “section 11” in the second line and inserting in lieu thereof

“subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

37. Subsection 54 (2) of the said Act is amended by striking out “section 19 of this Act” in the sixth line and inserting in lieu thereof “subsections 164(1), (2) and (3) of the Federal Act, as they apply for the purposes of this Act,”.

38.—(1) Subsection 55 (4) of the said Act is amended by striking out “section 11” in the third line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

(2) Subsection 55 (5) of the said Act is amended by striking out “section 11” in the second line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

(3) Subsection 55 (7) of the said Act is amended by striking out “section 19 of this Act” in the eighth and ninth lines and inserting in lieu thereof “subsections 164(1), (2) and (3) of the Federal Act, as they apply for the purposes of this Act,”.

(4) Subsection 55 (8) of the said Act is amended by striking out “section 11” in the fifteenth line and inserting in lieu thereof “subsection 153(1) of the Federal Act, as it applies for the purposes of this Act,”.

Application
of certain
sections

39.—(1) Clause 3 (8) (a) and subclause 3 (8) (b) (i) of the said Act, as re-enacted by subsections 2 (3) and (4), apply in respect of taxation years ending after the 31st day of December, 1985.

Idem

(2) Interest computed under section 14a of the said Act, as enacted by section 11, in respect of a period ending before the 1st day of January, 1987 shall be compounded after the 31st day of December, 1986.

Idem

(3) Clauses 7 (2c) (c) and (d) of the said Act, as enacted by section 3 of this Act, apply in respect of taxation years ending after the 31st day of December, 1987.

Commence-
ment

40.—(1) Except as provided in subsections (2) to (7), this Act comes into force on the day it receives Royal Assent.

Idem

(2) Section 16 shall be deemed to have come into force on the 1st day of January, 1985.

Idem

(3) Sections 10, 12 and 13 shall be deemed to have come into force on the 28th day of October, 1985.

(4) Subsections 2 (3) and (4) shall be deemed to have come into force on the 1st day of January, 1986. Idem

(5) Section 11 shall be deemed to have come into force on the 1st day of January, 1987. Idem

(6) Section 3 shall be deemed to have come into force on the 1st day of January, 1988. Idem

(7) Subsections 2 (1) and (2) come into force on the 1st day of January, 1990. Idem

41. The short title of this Act is the *Income Tax Amendment Act, 1989*. Short title

Bill 61

An Act to amend the Ontario Water Resources Act

Mrs. Marland



1st Reading October 17th, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to ensure that all bottled water that is sold in Ontario meets the minimum standards prescribed under the Act.

The Bill also provides authority to make regulations governing water dispensers used to dispense bottled water.

Bill 61**1989****An Act to amend the Ontario Water Resources Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

21a. No person shall sell or offer for sale for human consumption water that is in a sealed container or package unless the water meets the standards that are prescribed by the regulations made under this Act.

Standards for
bottled water

2. Section 44 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 50, section 2, 1983, chapter 51, section 3, 1986, chapter 68, section 35 and 1988, chapter 54, sections 76 and 88, is further amended by adding thereto the following subsection:

(2a) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing standards for water that is to be sold or offered for sale for human consumption in sealed containers or packages;
- (b) governing the manufacture, repair, service and sale of water dispensers, other than water dispensers that are connected to a municipal water supply.

3. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

4. The short title of this Act is the *Ontario Water Resources Amendment Act, 1989*.

Short title

Bill 62

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General



1st Reading October 18th, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

Section 136 of the *Courts of Justice Act, 1984*, which deals with the use of French in the courts, is re-enacted. The following are the major changes:

1. The concept of the "designated court" is no longer necessary because trials before bilingual judges have been available in all courts throughout Ontario since January, 1987.
2. Parties are entitled to have a bilingual judge or officer preside over all the hearings in a proceeding (for example, procedural motions, pre-trial hearings, hearings to assess costs), not just the trial.
3. In the following areas, parties are entitled as of right to file pleadings and other documents written in French:

Counties of Essex, Prescott and Russell, and Stormont, Dundas and Glengarry

Judicial Districts of Niagara South, Ottawa-Carleton and York

Territorial Districts of Cochrane and Sudbury

(Other areas may be added to the list by regulation.) In areas where French documents may be filed as of right, the courts will not be required to provide translations. However, the courts will continue to translate documents filed before hearings in the Provincial Court.

Bill 62

1989

An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 136 of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:

136.—(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. Bilingual
proceedings

(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding: Idem

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.
2. If a hearing that the party has specified is held before a judge and jury in a county or district named in Schedule 1, the jury shall consist of persons who speak English and French.
3. If a hearing that the party has specified is held without a jury, or with a jury in a county or district named in Schedule 1, evidence given and submissions made in English or French shall be received, recorded and transcribed in the language in which they are given.
4. Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.
5. Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.

6. In a county or district named in Schedule 2, a party may file pleadings and other documents written in French.
7. Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.
8. The reasons for a decision may be written in English or French.
9. On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language.

Appeals

(3) When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications.

**Documents
filed in
Family Court
or Small
Claims Court**

(4) A document filed by a party before a hearing in a proceeding in the Provincial Court (Family Division) or the Provincial Court (Civil Division) may be written in French.

Process

(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Provincial Offences Court may be written in French.

Translation

(6) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language.

Interpretation

(7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English.

**Parties who
are not
natural
persons**

(8) A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

- (a) prescribing procedures for the purpose of this section;
- (b) adding counties or districts to Schedule 1 or 2.

SCHEDULE 1

BILINGUAL JURIES

Paragraphs 2 and 3 of subsection 136 (2)

The following counties: Essex
Prescott and Russell
Renfrew
Stormont, Dundas and Glengarry

The following judicial districts: Niagara South
Ottawa-Carleton
York

The following territorial districts: Algoma
Cochrane
Nipissing
Sudbury
Timiskaming

SCHEDULE 2

BILINGUAL DOCUMENTS

Paragraph 6 of subsection 136 (2)

The following counties: Essex
Prescott and Russell
Stormont, Dundas and Glengarry

The following judicial districts: Niagara South
Ottawa-Carleton
York

The following territorial districts: Cochrane
Sudbury

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

3. The short title of this Act is the *Courts of Justice Amendment Act, 1989*. Short title

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B
56

Bill 62

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General



<i>1st Reading</i>	October 18th, 1989
<i>2nd Reading</i>	December 18th, 1989
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

Section 136 of the *Courts of Justice Act, 1984*, which deals with the use of French in the courts, is re-enacted. The following are the major changes:

1. The concept of the "designated court" is no longer necessary because trials before bilingual judges have been available in all courts throughout Ontario since January, 1987.
2. Parties are entitled to have a bilingual judge or officer preside over all the hearings in a proceeding (for example, procedural motions, pre-trial hearings, hearings to assess costs), not just the trial.
3. In the following areas, parties are entitled as of right to file pleadings and other documents written in French:

Counties of Essex, Prescott and Russell, and Stormont, Dundas and Glengarry

Territorial Districts of Cochrane and Sudbury

The former County of Welland

The Regional Municipality of Ottawa-Carleton

The Municipality of Metropolitan Toronto

(Other areas may be added to the list by regulation.) In areas where French documents may be filed as of right, the courts will not be required to provide translations. However, the courts will continue to translate documents filed before hearings in the Ontario Court (Provincial Division) and in the Small Claims Court.

Bill 62

1989

An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 136 of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:

136.—(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. Bilingual proceedings

(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding: Idem

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.
2. If a hearing that the party has specified is held before a judge and jury in an area named in Schedule 1, the jury shall consist of persons who speak English and French.
3. If a hearing that the party has specified is held without a jury, or with a jury in an area named in Schedule 1, evidence given and submissions made in English or French shall be received, recorded and transcribed in the language in which they are given.
4. Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.
5. Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.
6. In an area named in Schedule 2, a party may file pleadings and other documents written in French.

7. Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.
8. The reasons for a decision may be written in English or French.
9. On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language.

Appeals

(3) When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications.

Documents
filed in
Ontario
Court
(Provincial
Division) or
Small Claims
Court

(4) A document filed by a party before a hearing in a proceeding in the Ontario Court (Provincial Division) or in the Small Claims Court may be written in French.

Process

(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

Translation

(6) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language.

Interpretation

(7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English.

Parties who
are not
natural
persons

(8) A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

- (a) prescribing procedures for the purpose of this section;
- (b) adding areas to Schedule 1 or 2.



SCHEDULE 1

BILINGUAL JURIES

Paragraphs 2 and 3 of subsection 136 (2)

The following counties: Essex
Prescott and Russell
Renfrew
Stormont, Dundas and Glengarry

The following territorial districts: Algoma
Cochrane
Nipissing
Sudbury
Timiskaming

The area of the County of Welland as it existed on the 31st day of December, 1969.

The Regional Municipality of Ottawa-Carleton.

The Municipality of Metropolitan Toronto.

SCHEDULE 2

BILINGUAL DOCUMENTS

Paragraph 6 of subsection 136 (2)

The following counties: Essex
Prescott and Russell
Stormont, Dundas and Glengarry

The following territorial districts: Cochrane
Sudbury

The area of the County of Welland as it existed on the 31st day of December, 1969.

The Regional Municipality of Ottawa-Carleton.

The Municipality of Metropolitan Toronto.



Commence-
ment

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the *Courts of Justice Amendment Act, 1989*.

Bill 62

(Chapter 79
Statutes of Ontario, 1989)

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General



<i>1st Reading</i>	October 18th, 1989
<i>2nd Reading</i>	December 18th, 1989
<i>3rd Reading</i>	December 19th, 1989
<i>Royal Assent</i>	December 19th, 1989

Bill 62

1989

An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 136 of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:

136.—(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. Bilingual proceedings

(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding: Idem

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.
2. If a hearing that the party has specified is held before a judge and jury in an area named in Schedule 1, the jury shall consist of persons who speak English and French.
3. If a hearing that the party has specified is held without a jury, or with a jury in an area named in Schedule 1, evidence given and submissions made in English or French shall be received, recorded and transcribed in the language in which they are given.
4. Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.
5. Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.
6. In an area named in Schedule 2, a party may file pleadings and other documents written in French.

7. Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.
8. The reasons for a decision may be written in English or French.
9. On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language.

Appeals

(3) When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications.

**Documents
filed in
Ontario
Court
(Provincial
Division) or
Small Claims
Court**

(4) A document filed by a party before a hearing in a proceeding in the Ontario Court (Provincial Division) or in the Small Claims Court may be written in French.

Process

(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

Translation

(6) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language.

Interpretation

(7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English.

**Parties who
are not
natural
persons**

(8) A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

- (a) prescribing procedures for the purpose of this section;
- (b) adding areas to Schedule 1 or 2.

SCHEDULE 1

BILINGUAL JURIES

Paragraphs 2 and 3 of subsection 136 (2)

The following counties: Essex
Prescott and Russell
Renfrew
Stormont, Dundas and Glengarry

The following territorial districts: Algoma
Cochrane
Nipissing
Sudbury
Timiskaming

The area of the County of Welland as it existed on the 31st day of December, 1969.

The Regional Municipality of Ottawa-Carleton.

The Municipality of Metropolitan Toronto.

SCHEDULE 2

BILINGUAL DOCUMENTS

Paragraph 6 of subsection 136 (2)

The following counties: Essex
Prescott and Russell
Stormont, Dundas and Glengarry

The following territorial districts: Cochrane
Sudbury

The area of the County of Welland as it existed on the 31st day of December, 1969.

The Regional Municipality of Ottawa-Carleton.

The Municipality of Metropolitan Toronto.

Commence-
ment

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the *Courts of Justice Amendment Act, 1989*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

Bill 63

An Act to amend the Notaries Act

The Hon. I. Scott
Attorney General



1st Reading October 18th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to convert the position of the official responsible for the examination of potential notaries into a public service position. At present, the official is appointed by the Lieutenant Governor in Council.

Bill 63**1989****An Act to amend the Notaries Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (1) of the *Notaries Act*, being chapter 319 of the Revised Statutes of Ontario, 1980, is amended by striking out “by the Lieutenant Governor in Council” in the eighth line and inserting in lieu thereof “under the *Public Service Act*”.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Notaries Amendment Act*, Short title
1989.

Bill 63

*(Chapter 80
Statutes of Ontario, 1989)*

An Act to amend the Notaries Act

The Hon. I. Scott
Attorney General



<i>1st Reading</i>	October 18th, 1989
<i>2nd Reading</i>	December 18th, 1989
<i>3rd Reading</i>	December 19th, 1989
<i>Royal Assent</i>	December 19th, 1989

Bill 63**1989****An Act to amend the Notaries Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (1) of the *Notaries Act*, being chapter 319 of the Revised Statutes of Ontario, 1980, is amended by striking out “by the Lieutenant Governor in Council” in the eighth line and inserting in lieu thereof “under the *Public Service Act*”.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Notaries Amendment Act*, Short title
1989.

Bill 64

An Act to amend the Education Act and certain other Acts relating to Education Assessment

The Hon. S. Conway
Minister of Education



1st Reading October 19th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTION 1. The Bill removes the reference to centres of a zone in the definition of county and district combined separate school zones. The section also deletes the definition of urban separate school and urban separate school zones.

SECTION 2. Provision is made for the continuation of attendance by a student in a school despite the changes in school board boundaries.

SECTION 3. Provision is made for the Lieutenant Governor in Council to make regulations to provide for representation if the boundaries of a school division are altered.

SECTION 4. The Bill defines boundaries of separate school zones as the boundaries of a municipality or geographic township subject to the regulatory provisions provided for district and county combined separate school zones.

SECTIONS 5, 6 and 32. Provisions that are redundant to the new zone structure are repealed.

SECTIONS 7 and 8. Continues the provisions for meetings to establish separate school zones and eliminates the reference to centres of zones.

SECTION 9. Amends provisions of the Act to be consistent with the new zone structure.

SECTIONS 10 and 19. Deletes references to a zone centre.

SECTIONS 11, 12, 13 and 18. Removes sections and references to sections that are applicable to urban separate schools.

SECTION 14. Establishes an appropriate heading for the existing sections 95 and 96 of the Act.

SECTION 15. Removes a reference to a date that is no longer relevant.

SECTION 16. Deletes the reference to centre of a zone and continues the required oath for separate school electors in an urban municipality if the *Municipal Elections Act* applies.

SECTION 17. Continues the duties of a secretary of a board as the returning officer in territories without municipal organization and removes references to centres of zones.

SECTION 19. Establishes the existing designated areas of county and district combined separate school zones as one separate zone. It also provides for regulatory authority for the designated areas of the combined separate school zones with the same flexibility as is provided for the areas of divisional boards.

SECTION 20. Provides authority for the Minister to establish a combined separate school zone in a territorial district as a district combined separate school zone. It also provides authority for the Minister to extend the area of jurisdiction of a combined separate school zone on petition of the board of that zone.

SECTION 21. Deletes portions of the Act dealing with the establishment of a zone in a designated area.

SECTION 22. Continues the ownership of a school that changes from the area of jurisdiction of one board to the area of jurisdiction of another as a result of the boundary changes.

SECTION 23. Section 112 is amended to make it consistent with the new zone structure.

SECTION 24. Repeals a part of the Act that is redundant because the provisions are set out in section 206a (3).

SECTIONS 25, 26, 27, 37 and 38. References to The Carleton Roman Catholic Separate School Board, The Ottawa Roman Catholic Separate School Board and The Windsor Roman Catholic Separate School Board are removed. The areas of jurisdiction of these boards will be recreated by regulation as county combined separate school zones under the new provisions of section 105 of the Act.

SECTION 28. Repeals a section of the Act that is no longer necessary.

SECTION 29. Section 126 is amended to permit partnerships to designate portions of their school support to separate schools by notice to the assessment commissioner.

Subsection 126 (1a) provides that a corporation's right to designate a portion of its school support shall apply only to corporations other than those defined as public corporations in subsection 126a (1).

Subsection 126 (5) sets upper limits on the proportions of an assessment that may be directed to the separate school system.

SECTION 30. Section 126a defines public corporations and requires that their assessment in each municipality be shared between the public and separate school systems in the proportion of the support that each system enjoys from the residential and farm assessment in that municipality.

Subsections 126a (7) and (8) permit the Lieutenant Governor in Council to make regulations adjusting the proportions of assessment rated and assessed for each school system in each municipality for a period of up to six years, commencing with the 1st day of January, 1990.

Subsections 126a (9) and (10) permit the Lieutenant Governor in Council to make regulations adjusting each school system's share of the telephone and telegraph levy in each municipality for a period of up to six years, commencing with the 1st day of January, 1990.

SECTIONS 31 and 33. Makes provisions with respect to Protestant separate school boards consistent with the elimination of urban separate school boards.

SECTION 34. The definitions of "commercial assessment" and "residential and farm assessment" are made consistent with those to be found in section 368a of the *Municipal Act*.

SECTIONS 35 and 36. Makes provisions with respect to trailer fees payable to separate school boards consistent with the new zone and school board structure.

SECTION 39. Continues the representation for a trustee despite the fact that the trustee will not live in the area of jurisdiction of the board after the 1st day of January, 1990.

SECTION 40. Continues provisions for trustee representation on existing urban separate school boards for the balance of the current term of office.

SECTION 41.—Subsection 1. Paragraph 20 is added to subsection 13 (1) of the *Assessment Act* to require that a corporation's status as a public corporation be indicated on the assessment roll. This requirement does not take effect until the 1st day of December, 1990.

Subsection 2. Subsection 13 (4) is amended to ensure that corporate and partnership designation notices are taken into account in the preparation of the assessment roll.

SECTION 42. Continues the Metropolitan Separate School Board as a county combined separate school board instead of an urban separate school board.

SECTIONS 43 to 46. Section 161 of the *Municipal Act* and the *Regional Municipality of Haldimand-Norfolk Act*, the *Regional Municipality of Sudbury Act* and the *Regional Municipality of Waterloo Act* are amended to permit separate schools and, where necessary, the public and Roman Catholic sectors of The Ottawa-Carleton French-language School Board, to share in the portion of telephone and telegraph levies that previously went exclusively to public schools. These moneys are to be shared between the public and separate systems on the basis of the proportions of support enjoyed by each system in the residential and farm assessment in each municipality.

Bill 64

1989

**An Act to amend the Education Act and
certain other Acts relating to Education Assessment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraphs 9 and 16 of subsection 1 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

9. “county combined separate school zone” means a separate school zone that is an area designated by the regulations that is not in a territorial district;

.

16. “district combined separate school zone” means a separate school zone that is an area designated by the regulations in a territorial district.

(2) Paragraph 47 of the said subsection 1 (1) is amended by striking out “in a township or territory without municipal organization” in the second and third lines.

(3) Paragraphs 71 and 72 of the said subsection 1 (1) are repealed.

2. Section 47 of the said Act is amended by adding thereto the following subsections:

(4a) If on the 31st day of December, 1989 a pupil is ^{Idem} enrolled in a school that the pupil has a right to attend and on the 1st day of January, 1990 the pupil, because of alterations to school board boundaries, no longer has a right to attend the school under any other provision of this Part, the pupil has the right to attend the school until the pupil completes his or her education in the school.

Agreement
re
transportation

(4b) The board of which a pupil referred to in subsection (4a) is qualified to be a resident pupil may enter into an agreement with the board that operates the school, referred to in subsection (4a), in respect of the transportation of the pupil to and from the school.

3.—(1) Clause 54 (1) (f) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 4, is repealed and the following substituted therefor:

(f) provide for representation if the boundaries of a school division are altered.

(2) Clause 54 (2) (d) of the said Act is amended by striking out “subject to subsections 56 (4) to (8)” in the third and fourth lines.

4. Section 80 of the said Act is repealed and the following substituted therefor:

Boundaries
of zones

80.—(1) Unless otherwise determined in accordance with regulations made under subsections 105 (2) and 106 (2), the boundaries of a separate school zone shall, in accordance with sections 83 and 87, be the boundaries of,

- (a) a municipality;
- (b) a geographic township;
- (c) a combination of municipalities;
- (d) a combination of geographic townships; or
- (e) a combination of the areas referred to in clauses (a) to (d).

Zones not in
municipalities
or geographic
townships

(2) The boundaries of a separate school zone, in those parts of the territorial districts that are neither geographic townships nor municipalities, shall be the boundaries of a 9.6 kilometre square of land of which two sides are parallel to a line of latitude.

Zone
description

(3) If a separate school zone is a 9.6 kilometre square of land, the location of the zone shall be determined by the latitude and longitude of its northwest corner.

Deemed
inclusion to
zones

(4) If on the 31st day of December, 1989 no part of a separate school zone is a part of an area designated under subsection 105 (2) and if the separate school zone includes a part of a municipality or geographic township, the separate school

zone shall on the 1st day of January, 1990 be deemed to include all of the municipality or geographic township.

5. Subsections 81 (1), (2), (3) and (5) of the said Act are repealed.

6. Section 82 of the said Act is repealed.

7.—(1) Subsection 83 (1) of the said Act is repealed and the following substituted therefor:

(1) A public meeting of persons desiring to establish a separate school zone may be convened by,

Meeting to
establish a
separate
school zone

- (a) not fewer than five heads of families, being Roman Catholics and being householders or freeholders resident within a municipality or a geographic township that is not within an area designated by the regulations made under subsection 105 (2), who desire to establish the area of the municipality or geographic township as a separate school zone;
- (b) not fewer than ten heads of families being Roman Catholics and being householders or freeholders resident within a 9.6 kilometre square of land, that is not part of a municipality, a geographic township, a separate school zone established under this subsection or a combined separate school zone, who desire to establish the square of land as a separate school zone; or
- (c) not fewer than five heads of families being Roman Catholics and being householders or freeholders resident within a 9.6 kilometre square of land, that is not part of a municipality, a geographic township, a separate school zone established under this subsection or a combined separate school zone, who desire to establish the square of land as a separate school zone and unite the zone with one or more separate school zones.

(2) Clauses 83 (2) (b) and (c) of the said Act are repealed and the following substituted therefor:

- (b) pass a motion to determine that the area of the municipality or geographic township, as the case requires, be established as a separate school zone.

(3) Clause 83 (2) (d) of the said Act is repealed and the following substituted therefor:

- (d) if clause 83 (1) (a) or (b) applies, elect the required number of trustees; and

.

(4) Subsection 83 (5) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 7, is repealed and the following substituted therefor:

Corporate
name

(5) On and after transmission to the Minister of the documents referred to in subsection (4), the separate school zone is established and the trustees named therein are a body corporate under the name of “The Roman Catholic Separate School Board” (inserting the name selected by the board and approved by the Minister).

8.—(1) Subsection 84 (1) of the said Act is repealed.

(2) Subsection 84 (2) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 8, is repealed.

(3) Subsection 84 (3) of the said Act is amended by striking out “subsection (1)” in the first and second lines and inserting in lieu thereof “subsection 83 (1)”.

(4) Subsection 84 (4) of the said Act is amended by striking out “clause (1) (b)” in the second line and inserting in lieu thereof “clause 83 (1) (c)”.

9. Section 85 of the said Act is repealed and the following substituted therefor:

Right to vote
in year of
establishment
of zone

85. A Roman Catholic who is a householder or freeholder, who is eighteen years of age and who desires to establish the area in which the Roman Catholic is resident as a separate school zone under section 83, is entitled, in the year in which the separate school zone is established, to vote on any matter that relates to the separate school.

10. Subsection 88 (2) of the said Act is repealed and the following substituted therefor:

Qualified
voters
detaching a
separate
school zone

(2) The persons who are entitled to vote on the question are the supporters of the combined separate school who reside in the portion of the combined separate school zone that it is proposed to detach.

11. Subsection 90 (2a) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 32, section 27, is repealed.

12. Section 93 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 29, is repealed.

13. Section 94 of the said Act is repealed.

14. The said Act is amended by inserting before section 95 the following heading:

Separate School Electors

15. Subsection 97 (2) of the said Act is repealed and the following substituted therefor:

(2) The term of office of trustees of a rural separate school board shall commence on the 1st day of December in the year of a regular election. Term of office

16.—(1) Section 101 of the said Act is amended by,

- (a) striking out “where the centre of a rural separate school zone is in a municipality” in the first and second lines and inserting in lieu thereof “if the rural separate school zone is a municipality or combination of municipalities”; and
- (b) inserting after “municipality” in the seventh line “having the greatest population”.

(2) The said section 101 is further amended by adding thereto the following subsection:

(2) Despite section 100, if the area of a rural separate school zone is not in a township or territory without municipal organization, in the year of a regular election the *Municipal Elections Act* applies with necessary modifications to the election of trustees of the rural separate school board, except that the oath to be taken by the voter shall be: Application of R.S.O. 1980, c. 308

You swear that you are the person named (or intended to be named) in the list of voters now shown to you (*showing the list to the voter*); That you are eighteen years of age; That you are a Roman Catholic separate school elector; That you have not voted before at this election; That you have not, directly or indirectly, received any reward or gift and do not expect to receive any for the vote which you tender at this election. So help you God.

17. Section 102 of the said Act is repealed and the following substituted therefor:

102.—(1) If territory without municipal organization is part of a combined separate school zone and the election of Secretary of board as returning officer

R.S.O. 1980,
c. 308

trustees of the board for a part of the combined zone is conducted under the *Municipal Elections Act*, the secretary of the board shall be the returning officer and shall perform all the duties of a municipal clerk in the election for the territory without municipal organization.

Reporting of
vote

(2) The secretary of the board shall report forthwith the vote recorded in the territory to the returning officer for the municipality having the greatest population in the electoral area, of which the territory without municipal organization forms part.

Reporting if
no municipi-
pality

(3) If there is no municipality in the electoral area, the secretary of the board shall report to the returning officer of the municipality that has the greatest population in the area of jurisdiction of the board and the returning officer shall prepare the final summary and announce the result of the vote.

18.—(1) Clause 103 (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 32, section 34, is amended by striking out “section 93” in the first line and inserting in lieu thereof “subsection 206a (2)”.

(2) Subsection 103 (3) of the said Act is amended by striking out “section 93 or 100” in the sixth line and inserting in lieu thereof “section 100 or subsection 206a (2)”.

(3) Subsection 103 (6) of the said Act is amended by striking out “sections 93, 94 and 95” in the third and fourth lines and inserting in lieu thereof “section 95 and subsections 101 (2) and 206a (2)”.

(4) Subsection 103 (7) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 15, is further amended by striking out “section 93” in the fifth line and inserting in lieu thereof “subsection 206a (2)”.

(5) Subsection 103 (9) of the said Act is repealed.

19.—(1) Subsection 105 (1) of the said Act is repealed and the following substituted therefor:

Separate
school zones

(1) Each area that prior to the 31st day of December, 1989 is designated by the regulations under subsection (2) shall on the 1st day of January, 1990 be one separate school zone.

(2) Clauses 105 (2) (a) and (b) of the said Act are repealed and the following substituted therefor:

- (a) designating, as a county or district combined separate school zone, all or part of one or more municipalities, localities, counties, regional municipalities, district municipalities or territory without municipal organization or a combination thereof and designating the name of the area;
- (b) altering the boundaries of a designated area, referred to in clause (a) and, if any part of territory without municipal organization is attached to the area, designating the part as a district municipality or attaching it to a district municipality.

(3) Clause 105 (2) (d) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 16, is repealed and the following substituted therefor:

- (d) providing for representation if the boundaries of a designated area are altered;
- (e) combining two or more adjoining county or district combined separate school zones and providing that the board of the combined zone shall be a county or district combined separate school zone.

(4) Subsection 105 (3) of the said Act is amended by striking out “the centre of” in the second line.

(5) Subsection 105 (5) of the said Act is amended by striking out “the centre of” in the first line.

20.—(1) Subsection 106 (1) of the said Act is amended by striking out “Where the board of a combined separate school zone in the territorial districts applies to the Minister to have the zone made a district combined separate school zone and the board become a district combined separate school board” in the first, second, third, fourth and fifth lines and by striking out “such” in the seventh line and inserting in lieu thereof “a combined separate school”.

(2) Section 106 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 17, is further amended by adding thereto the following subsection:

(2) If the board of a combined separate school zone in the territorial districts applies to the Minister to extend the boundaries of the combined separate school zone so as to include parcels of land on which a separate school zone cannot be established because of the operation of subsection Regulation

83 (1), the Lieutenant Governor in Council may by regulation extend the boundaries of the combined separate school zone.

21. Sections 107 and 108 of the said Act are repealed.

22. The said Act is further amended by adding thereto the following section:

School to
remain
school of
board

110a. Despite sections 109 and 110, a school that was in the area of jurisdiction of a county or district combined separate school board on the 31st day of December, 1989 shall be a school of the board on the 1st day of January, 1990 and shall so remain unless otherwise determined by the board.

23. Subsection 112 (1) of the said Act is repealed and the following substituted therefor:

Deemed
district
municipality

(1) A part of territory without municipal organization that is in an area designated by the regulations made under subsection 105 (2) shall be deemed to be a district municipality for district combined separate school purposes.

24. Section 114 of the said Act is repealed.

25. Section 116 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 22 and 1989, chapter 1, section 11, is repealed.

26. Section 117 of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 12, is repealed.

27. Subsection 118 (1) of the said Act is repealed.

28. Section 121 of the said Act is repealed.

29.—(1) Subsection 126 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is repealed and the following substituted therefor:

Definition
R.S.O. 1980,
c. 370

(1) In this section, “partnership” means partnership within the meaning of the *Partnerships Act*.

Application

(1a) This section does not apply to a public corporation within the meaning of section 126a.

Right of
corporation
to support
separate
schools
R.S.O. 1980,
c. 31

(1b) Subject to subsection (5), a corporation or partnership by notice to the assessment commissioner in a form prescribed under the *Assessment Act* may require the whole or any part

of its assessment to be entered, rated and assessed for separate school purposes.

(2) Subsection 126 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

(3) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall enter the corporation or partnership on the assessment roll to be next returned as a separate school supporter with respect to the assessment designated in the notice, and the assessment so designated shall be assessed accordingly for separate school purposes and the remainder, if any, of the assessment of the corporation or partnership shall be separately entered and assessed for public school purposes.

Duty of
assessment
commissioner

(3) Subsection 126 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

(4) The clerk, upon receipt of the notice from the assessment commissioner, shall enter the corporation or partnership as a separate school supporter in the collector's roll in respect of the assessment designated in the notice and the proper entries shall be made in the prescribed column for separate school rates, and the assessment so designated shall be assessed accordingly for separate school purposes and the remainder, if any, of the assessment of the corporation or partnership shall be separately entered and assessed for public school purposes.

Duty of clerk

(4) Subsection 126 (5) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

(5) The portion of an assessment that is designated by a corporation or partnership under this section shall not bear a greater proportion to the whole of the assessment than,

Proportion of
assessment

- (a) in the case of a corporation, the number of shares held by Roman Catholics in the corporation bears to the total number of shares of the corporation issued and outstanding; and
- (b) in the case of a partnership, the interest of partners who are Roman Catholics in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment.

(5) Subsection 126 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is amended by inserting after “notice” in the first line “by a corporation under this section”.

(6) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8 and 1986, chapter 21, section 3, is further amended by adding thereto the following subsection:

Idem

(6a) A notice given by a partnership under this section is sufficient if signed by a partner and shall continue in force and be acted upon until it is withdrawn, varied or cancelled by a notice subsequently given by a partner, except that, upon appeal, if it is ruled that the notice is not a proper notice, it is void, and the assessment commissioner shall so notify the partnership and mark the notice accordingly.

(7) Subsection 126 (8) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed.

(8) Subsection 126 (9) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 21, section 3, is amended by inserting after “corporation” in the first line “or partnership”.

30. The said Act is further amended by adding thereto the following section:

Definitions

126a.—(1) In this section and in section 126,

R.S.O. 1980,
c. 31

“assessment”, in respect of a corporation or partnership, means the assessment of land under the *Assessment Act* of which the corporation or partnership is either the owner and occupant, or, not being the owner, is the tenant, occupant or actual possessor, and includes the business or other assessment of the corporation or partnership made under that Act;

“municipality” means a city, town, village, township or a public school section, separate school zone or secondary school district that is in territory without municipal organization or that portion of a public school section, separate school zone or secondary school district that is in territory without municipal organization;

“public corporation” means,

R.S.O. 1980,
c. 466

(a) a body corporate that is, by reason of its shares, a reporting issuer within the meaning of the *Securities*

Act or that has, by reason of its shares, a status comparable to a reporting issuer under the law of any other jurisdiction,

- (b) a body corporate that issues shares that are traded on a market if the prices at which they are traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation, or
- (c) subject to subsection (2), a body corporate that is, within the meaning of subsections 1 (1) and (2), clause 1 (3) (a) and subsections 1 (4), (5) and (6) of the *Securities Act*, controlled by or is an affiliate or subsidiary of a body corporate or two or more bodies corporate described in clause (a) or (b);

R.S.O. 1980,
c. 466

“residential and farm assessment” means residential and farm assessment as defined in clause 220 (b) but, for assessment in the year 1990 for taxation in the year 1991 and for later years, does not include the assessment of real property of public corporations.

(2) For the purposes of this section, the expression “more than 50 per cent of the votes” in the second line of clause 1 (3) (a) of the *Securities Act* shall be deemed to read “50 per cent or more of the votes”.

Percentage of
votes

(3) An assessment of a public corporation in a municipality shall be rated and assessed for separate school purposes in the same proportion to the total assessment of the public corporation in the municipality as the residential and farm assessment rated and assessed for separate school purposes in the municipality bears to the total residential and farm assessment in the municipality.

Proportion of
assessment
for separate
school
purposes

(4) For the purposes of subsection (3), if more than one public school board has jurisdiction in the same municipality, the proportion to be determined shall be the proportion of the assessment in the portion of the municipality within the jurisdiction of each board.

Idem

(5) The assessment commissioner shall enter the public corporation on the assessment roll to be next returned as a separate school supporter with respect to the proportion of its assessment in the municipality determined by subsection (3) and the remainder of the assessment of the public corporation shall be separately entered and assessed for public school purposes.

Duty of
assessment
commissioner

Supple-
mentary or
omitted
assessments
R.S.O. 1980,
c. 31

(6) An assessment of a public corporation made under section 32 or 33 of the *Assessment Act* shall be rated and assessed for public and separate school purposes in the manner set out in subsections (3) and (5).

Regulations

(7) The Lieutenant Governor in Council may make regulations adjusting the proportions of assessment rated and assessed for public and separate school purposes in each municipality in each year for a period of up to six years commencing with the 1st day of January, 1990 and requiring the assessment commissioner to adjust the rolls accordingly.

Idem

(8) Despite subsections (3) and (5), the proportions of assessment rated and assessed for public and separate school purposes in any year for which a regulation made under subsection (7) is applicable shall be those proportions determined in accordance with such regulation.

Idem

R.S.O. 1980,
c. 302

(9) The Lieutenant Governor in Council may make regulations adjusting the allocation or payment of the tax levied in each year under subsections 161 (12) and (13) of the *Municipal Act* to the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board or to each board, for a period of up to six years commencing with the 1st day of January, 1990 and requiring the council of the municipality that levied the tax to allocate or pay the tax accordingly.

Idem

R.S.O. 1980,
cc. 302, 435,
441, 442

(10) Despite subsections 161 (22a) and 368j (3a) of the *Municipal Act*, subsection 81 (2a) of the *Regional Municipality of Haldimand-Norfolk Act*, subsection 73 (2a) of the *Regional Municipality of Sudbury Act* and subsection 120 (2a) of the *Regional Municipality of Waterloo Act*, the allocation or payment determined for the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board or for each board for any year to which a regulation made under subsection (9) is applicable shall be that determined in accordance with such regulation.

31.—(1) Subsection 144 (2) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 23, is further amended by striking out “and Part VII-A” in the amendment of 1988 and by striking out “and urban” in the seventh line and in the ninth line.

(2) Section 144 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 23, is further amended by adding thereto the following subsection:

(3) Despite subsection (2), Part VII-A applies to the election of trustees of a Protestant separate school board that is situated in an urban municipality. Idem

32. Subsections 171 (3) and (5) of the said Act are repealed.

33.—(1) The definition of “board” in subsection 206a (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by striking out “an urban separate school board” in the first and second lines.

(2) Clause 206a (3) (a) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by inserting after “105 (2)” in the second line “or 106 (1) or 106 (2)”.

(3) Clause 206a (3) (b) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is repealed.

(4) Rule 4 of subsection 206a (6) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by striking out “an urban separate school board” in the second line.

34. Section 220 of the said Act is repealed and the following substituted therefor:

220. In sections 221, 222 and 223,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal or regional corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll, except the assessments for real property mentioned in

clauses (a) and (c) of the definition of “commercial assessment”.

35.—(1) Subsection 227 (3) of the said Act is amended by striking out “that is situated within 4.8 kilometres of the trailer and within the municipality or a municipality contiguous thereto” in the fourth, fifth and sixth lines and inserting in lieu thereof “that is operated by the separate school board of the separate school zone in which the trailer is located”.

(2) Clause 227 (3) (a) of the said Act is amended by striking out “that is within 4.8 kilometres of the separate school” in the fourth and fifth lines and inserting in lieu thereof “that is in the separate school zone”.

(3) Clause 227 (3) (b) of the said Act is amended by striking out “within 4.8 kilometres of the separate school” at the end thereof and inserting in lieu thereof “in the separate school zone”.

36. Subsection 228 (2) of the said Act is amended by striking out “within 4.8 kilometres of the trailer” in the seventh line and inserting in lieu thereof “operated by the separate school board of the separate school zone in which the trailer is located”.

37. Clauses (c) and (d) of the definition of “board” in section 257a of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 1, are repealed.

38. Clauses (c) and (d) of the definition of “board” in section 277c of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 11, are repealed.

Transition

39. For the purposes of clause 196 (1) (c) of the *Education Act*, for the period from the 1st day of January, 1990 until the 30th day of November, 1991, the area of jurisdiction of a school board shall be deemed to include the area of jurisdiction of the board as it existed on the 31st day of December, 1989.

Transition

40. Despite subsections 1 (2) and (3), sections 11, 12 and 13 and subsection 33 (4) of this Act, the provisions for trustee representation of a board that prior to the 1st day of December, 1989 was an urban separate school board shall continue in effect until the 30th day of November, 1991.

41.—(1) Subsection 13 (1) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section

2, 1982, chapter 56, section 1 and 1988, chapter 47, section 80, is further amended by adding thereto the following paragraph:

20. In the case of a corporation, whether the corporation is a public corporation for the purposes of section 126a of the *Education Act* or section 18a of the *Ottawa-Carleton French-Language School Board Act*, 1988.

R.S.O. 1980,
c. 129
1988, c. 47

(2) Subsection 13 (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 47, section 2 and amended by 1988, chapter 20, section 20, is repealed and the following substituted therefor:

- (4) In the preparation of the assessment roll, the assessment commissioner, in determining the names and school support of those persons entitled to direct taxes for school support purposes, shall be guided by the index books provided for in the *Education Act*, by the applications for direction of school taxes received and approved by the assessment commissioner under section 15 of this Act and by the notices received under section 126 of the *Education Act* and section 18 of the *Ottawa-Carleton French-Language School Board Act*, 1988.

School
support

R.S.O. 1980,
c. 129

1988, c. 47

42. Section 17 of *The Metropolitan Separate School Board Act*, 1953, being chapter 119, as re-enacted by the Statutes of Ontario, 1988, chapter 27, section 38, is repealed and the following substituted therefor:

- 17.** Except as otherwise provided in this Act, the Metropolitan Board shall be a county combined separate school board within the meaning of the *Education Act* and with respect to the district shall enjoy all the rights, powers and privileges of and be subject to all the obligations imposed upon a county combined separate school board by that Act.

Metropolitan
Board to be
county
combined
separate
school board
R.S.O. 1980,
c. 129

43.—(1) Subsection 161 (18) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by striking out “separate” in the third line.

(2) Subsection 161 (21) of the said Act is amended by striking out “separate” in the fourth line.

(3) Section 161 of the said Act is amended by adding thereto the following subsections:

- (22a) Notwithstanding subsection (22), that portion of the tax levied under subsections (12) and (13) to be allocated to public school boards shall be shared among all school boards

Idem

having jurisdiction in the municipality in the proportion that the share of the residential and farm assessment of each school board in the municipality in the preceding year bears to the whole of the residential and farm assessment in the municipality in the preceding year.

Deemed
school boards

(22b) For purposes of subsection (22a), in the case of area municipalities within The Regional Municipality of Ottawa-Carleton, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board shall each be deemed to be a school board having jurisdiction in the municipality.

(4) Subsection 161 (23) of the said Act is amended by inserting after “subsection (22)” in the first line “and subsection (22a)”.

(5) Subsection 161 (24) of the said Act is amended by inserting after “subsection (22)” in the first line “or to each school board under subsection (22a)” and by inserting after “body” in the second line “or school board”.

(6) Section 368j of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards

(3a) Notwithstanding subsections (1) and (2), that portion of the tax levied by a lower tier municipality, city, separated town or separated township in a county under subsections 161 (12) and (13) of this Act to be paid to the appropriate public school boards shall be shared among all school boards having jurisdiction in the lower tier municipality, city, separated town or separated township, as the case may be, in the proportion that the share of each school board of the residential and farm assessment in the lower tier municipality, city, separated town or separated township bears to the whole of the residential and farm assessment in the lower tier municipality, city, separated town or separated township.

(7) Subsection 368j (4) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is amended by,

(a) striking out “public” in the third line; and

(b) striking out “or (2)” at the end thereof and inserting in lieu thereof “(2) or (3a)”.

(8) Clause 368k (1) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is repealed and the following substituted therefor:

(b) a school board under subsection 368j (3a); or

44.—(1) Section 81 of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is amended by adding thereto the following subsection:

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to the appropriate public school boards shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

Payment of
portion of
telephone
and telegraph
tax to school
boards
R.S.O. 1980,
c. 302

(2) Subsection 81 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is amended by striking out “public” in the fourth line and by adding at the end thereof “or (2a)”.

(3) Clause 81a (1) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is repealed and the following substituted therefor:

(b) a school board under subsection 81 (2a); or

45.—(1) Section 73 of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by adding thereto the following subsection:

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to The Sudbury Board of Education shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

Payment of
portion of
telephone
and telegraph
tax to school
boards
R.S.O. 1980,
c. 302

(2) Subsection 73 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by inserting after “Corporation” in the third line “The Sudbury District Roman Catholic Separate School Board” and by adding at the end thereof “or (2a)”.

(3) Subsection 73a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by,

(a) striking out “or to the Regional Corporation” in the second and third lines and inserting in lieu thereof “or 73 (1) or to The Sudbury District Roman Catholic Separate School Board”; and

(b) striking out “73 (1)” in the fourth line and inserting in lieu thereof “73 (2a)”.

(4) Subsection 73a (3) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by inserting after “Education” in the first line “or The Sudbury District Roman Catholic Separate School Board, or each of them”.

46.—(1) Section 120 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards
R.S.O. 1980,
c. 302

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to The Waterloo County Board of Education shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

(2) Subsection 120 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is amended by inserting after “Corporation” in the third line “The Waterloo Region Roman Catholic Separate School Board” and by adding at the end thereof “or (2a)”.

(3) Clause 120a (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is repealed and the following substituted therefor:

(b) a school board under subsection 120 (2a); or

.

47.—(1) This Act, except sections 25, 26 and 27 and sub- Commencement
section 41 (1), comes into force on the 1st day of December,
1989.

(2) Sections 25, 26 and 27 come into force on a day to be Idem
named by proclamation of the Lieutenant Governor.

(3) Subsection 41 (1) comes into force on the 1st day of Idem
December, 1990.

48. The short title of this Act is the *Education Statute Law* Short title
Amendment Act, 1989.

Bill 64

An Act to amend the Education Act and certain other Acts relating to Education Assessment

The Hon. S. Conway
Minister of Education



1st Reading October 19th, 1989
2nd Reading November 8th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

SECTION 1. The Bill removes the reference to centres of a zone in the definition of county and district combined separate school zones. The section also deletes the definition of urban separate school and urban separate school zones.

SECTION 2. Provision is made for the continuation of attendance by a student in a school despite the changes in school board boundaries.

SECTION 3. Provision is made for the Lieutenant Governor in Council to make regulations to provide for representation if the boundaries of a school division are altered.

SECTION 4. The Bill defines boundaries of separate school zones as the boundaries of a municipality or geographic township subject to the regulatory provisions provided for district and county combined separate school zones.

SECTIONS 5, 6 and 32. Provisions that are redundant to the new zone structure are repealed.

SECTIONS 7 and 8. Continues the provisions for meetings to establish separate school zones and eliminates the reference to centres of zones.

SECTION 9. Amends provisions of the Act to be consistent with the new zone structure.

SECTIONS 10 and 19. Deletes references to a zone centre.

SECTIONS 11, 12, 13 and 18. Removes sections and references to sections that are applicable to urban separate schools.

SECTION 14. Establishes an appropriate heading for the existing sections 95 and 96 of the Act.

SECTION 15. Removes a reference to a date that is no longer relevant.

SECTION 16. Deletes the reference to centre of a zone and continues the required oath for separate school electors in an urban municipality if the *Municipal Elections Act* applies.

SECTION 17. Continues the duties of a secretary of a board as the returning officer in territories without municipal organization and removes references to centres of zones.

SECTION 19. Establishes the existing designated areas of county and district combined separate school zones as one separate zone. It also provides for regulatory authority for the designated areas of the combined separate school zones with the same flexibility as is provided for the areas of divisional boards.

SECTION 20. Provides authority for the Minister to establish a combined separate school zone in a territorial district as a district combined separate school zone. It also provides authority for the Minister to extend the area of jurisdiction of a combined separate school zone on petition of the board of that zone.

SECTION 21. Deletes portions of the Act dealing with the establishment of a zone in a designated area.

SECTION 22. Continues the ownership of a school that changes from the area of jurisdiction of one board to the area of jurisdiction of another as a result of the boundary changes.

SECTION 23. Section 112 is amended to make it consistent with the new zone structure.

SECTION 24. Repeals a part of the Act that is redundant because the provisions are set out in section 206a (3).

SECTIONS 25, 26, 27, 37 and 38. References to The Carleton Roman Catholic Separate School Board, The Ottawa Roman Catholic Separate School Board and The Windsor Roman Catholic Separate School Board are removed. The areas of jurisdiction of these boards will be recreated by regulation as county combined separate school zones under the new provisions of section 105 of the Act.

SECTION 28. Repeals a section of the Act that is no longer necessary.

SECTION 29. Section 126 is amended to permit partnerships to designate portions of their school support to separate schools by notice to the assessment commissioner.

Subsection 126 (1a) provides that a corporation's right to designate a portion of its school support shall apply only to corporations other than those defined as public corporations in subsection 126a (1).

Subsection 126 (5) sets upper limits on the proportions of an assessment that may be directed to the separate school system.

SECTION 30. Section 126a defines public corporations and requires that their assessment in each municipality be shared between the public and separate school systems in the proportion of the support that each system enjoys from the residential and farm assessment in that municipality.

Subsections 126a (7) and (8) permit the Lieutenant Governor in Council to make regulations adjusting the proportions of assessment rated and assessed for each school system in each municipality for a period of up to six years, commencing with the 1st day of January, 1990.

Subsections 126a (9) and (10) permit the Lieutenant Governor in Council to make regulations adjusting each school system's share of the telephone and telegraph levy in each municipality for a period of up to six years, commencing with the 1st day of January, 1990.

SECTIONS 31 and 33. Makes provisions with respect to Protestant separate school boards consistent with the elimination of urban separate school boards.

SECTION 34. The definitions of "commercial assessment" and "residential and farm assessment" are made consistent with those to be found in section 368a of the *Municipal Act*.

SECTIONS 35 and 36. Makes provisions with respect to trailer fees payable to separate school boards consistent with the new zone and school board structure.

SECTION 39. Continues the representation for a trustee despite the fact that the trustee will not live in the area of jurisdiction of the board after the 1st day of January, 1990.

SECTION 40. Continues provisions for trustee representation on existing urban separate school boards for the balance of the current term of office.

SECTION 41.—Subsection 1. Paragraph 20 is added to subsection 13 (1) of the *Assessment Act* to require that a corporation's status as a public corporation be indicated on the assessment roll. This requirement does not take effect until the 1st day of December, 1990.

Subsection 2. Subsection 13 (4) is amended to ensure that corporate and partnership designation notices are taken into account in the preparation of the assessment roll.

SECTION 42. Continues the Metropolitan Separate School Board as a county combined separate school board instead of an urban separate school board.

SECTIONS 43 to 46. Section 161 of the *Municipal Act* and the *Regional Municipality of Haldimand-Norfolk Act*, the *Regional Municipality of Sudbury Act* and the *Regional Municipality of Waterloo Act* are amended to permit separate schools and, where necessary, the public and Roman Catholic sectors of The Ottawa-Carleton French-language School Board, to share in the portion of telephone and telegraph levies that previously went exclusively to public schools. These moneys are to be shared between the public and separate systems on the basis of the proportions of support enjoyed by each system in the residential and farm assessment in each municipality.

Bill 64

1989

An Act to amend the Education Act and certain other Acts relating to Education Assessment

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraphs 9 and 16 of subsection 1 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

9. “county combined separate school zone” means a separate school zone that is an area designated by the regulations that is not in a territorial district;

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16. “district combined separate school zone” means a separate school zone that is an area designated by the regulations in a territorial district.

(2) Paragraph 47 of the said subsection 1 (1) is amended by striking out “in a township or territory without municipal organization” in the second and third lines.

(3) Paragraphs 71 and 72 of the said subsection 1 (1) are repealed.

2. Section 47 of the said Act is amended by adding thereto the following subsections:

(4a) If on the 31st day of December, 1989 a pupil is enrolled in a school that the pupil has a right to attend and on the 1st day of January, 1990 the pupil, because of alterations to school board boundaries, no longer has a right to attend the school under any other provision of this Part, the pupil has the right to attend the school until the pupil completes his or her education in the school. ^{Idem}

Agreement
re
transportation

(4b) The board of which a pupil referred to in subsection (4a) is qualified to be a resident pupil may enter into an agreement with the board that operates the school, referred to in subsection (4a), in respect of the transportation of the pupil to and from the school.

3.—(1) Clause 54 (1) (f) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 4, is repealed and the following substituted therefor:

(f) provide for representation if the boundaries of a school division are altered.

(2) Clause 54 (2) (d) of the said Act is amended by striking out “subject to subsections 56 (4) to (8)” in the third and fourth lines.

4. Section 80 of the said Act is repealed and the following substituted therefor:

Boundaries
of zones

80.—(1) Unless otherwise determined in accordance with regulations made under subsections 105 (2) and 106 (2), the boundaries of a separate school zone shall, in accordance with sections 83 and 87, be the boundaries of,

- (a) a municipality;
- (b) a geographic township;
- (c) a combination of municipalities;
- (d) a combination of geographic townships; or
- (e) a combination of the areas referred to in clauses (a) to (d).

Zones not in
municipalities
or geographic
townships

(2) The boundaries of a separate school zone, in those parts of the territorial districts that are neither geographic townships nor municipalities, shall be the boundaries of a 9.6 kilometre square of land of which two sides are parallel to a line of latitude.

Zone
description

(3) If a separate school zone is a 9.6 kilometre square of land, the location of the zone shall be determined by the latitude and longitude of its northwest corner.

Deemed
inclusion to
zones

(4) If on the 31st day of December, 1989 no part of a separate school zone is a part of an area designated under subsection 105 (2) and if the separate school zone includes a part of a municipality or geographic township, the separate school

zone shall on the 1st day of January, 1990 be deemed to include all of the municipality or geographic township.

5. Subsections 81 (1), (2), (3) and (5) of the said Act are repealed.

6. Section 82 of the said Act is repealed.

7.—(1) Subsection 83 (1) of the said Act is repealed and the following substituted therefor:

(1) A public meeting of persons desiring to establish a separate school zone may be convened by,

Meeting to
establish a
separate
school zone

- (a) not fewer than five heads of families, being Roman Catholics and being householders or freeholders resident within a municipality or a geographic township that is not within an area designated by the regulations made under subsection 105 (2), who desire to establish the area of the municipality or geographic township as a separate school zone;
- (b) not fewer than ten heads of families being Roman Catholics and being householders or freeholders resident within a 9.6 kilometre square of land, that is not part of a municipality, a geographic township, a separate school zone established under this subsection or a combined separate school zone, who desire to establish the square of land as a separate school zone; or
- (c) not fewer than five heads of families being Roman Catholics and being householders or freeholders resident within a 9.6 kilometre square of land, that is not part of a municipality, a geographic township, a separate school zone established under this subsection or a combined separate school zone, who desire to establish the square of land as a separate school zone and unite the zone with one or more separate school zones.

(2) Clauses 83 (2) (b) and (c) of the said Act are repealed and the following substituted therefor:

- (b) pass a motion to determine that the area of the municipality or geographic township, as the case requires, be established as a separate school zone.

(3) Clause 83 (2) (d) of the said Act is repealed and the following substituted therefor:

- (d) if clause 83 (1) (a) or (b) applies, elect the required number of trustees; and

(4) Subsection 83 (5) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 7, is repealed and the following substituted therefor:

Corporate
name

(5) On and after transmission to the Minister of the documents referred to in subsection (4), the separate school zone is established and the trustees named therein are a body corporate under the name of "The Roman Catholic Separate School Board" (inserting the name selected by the board and approved by the Minister).

8.—(1) Subsection 84 (1) of the said Act is repealed.

(2) Subsection 84 (2) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 8, is repealed.

(3) Subsection 84 (3) of the said Act is amended by striking out "subsection (1)" in the first and second lines and inserting in lieu thereof "subsection 83 (1)".

(4) Subsection 84 (4) of the said Act is amended by striking out "clause (1) (b)" in the second line and inserting in lieu thereof "clause 83 (1) (c)".

9. Section 85 of the said Act is repealed and the following substituted therefor:

Right to vote
in year of
establishment
of zone

85. A Roman Catholic who is a householder or freeholder, who is eighteen years of age and who desires to establish the area in which the Roman Catholic is resident as a separate school zone under section 83, is entitled, in the year in which the separate school zone is established, to vote on any matter that relates to the separate school.

10. Subsection 88 (2) of the said Act is repealed and the following substituted therefor:

Qualified
voters
detaching a
separate
school zone

(2) The persons who are entitled to vote on the question are the supporters of the combined separate school who reside in the portion of the combined separate school zone that it is proposed to detach.

11. Subsection 90 (2a) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 32, section 27, is repealed.

12. Section 93 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 29, is repealed.

13. Section 94 of the said Act is repealed.

14. The said Act is amended by inserting before section 95 the following heading:

Separate School Electors

15. Subsection 97 (2) of the said Act is repealed and the following substituted therefor:

(2) The term of office of trustees of a rural separate school board shall commence on the 1st day of December in the year of a regular election. Term of office

16.—(1) Section 101 of the said Act is amended by,

- (a) striking out “where the centre of a rural separate school zone is in a municipality” in the first and second lines and inserting in lieu thereof “if the rural separate school zone is a municipality or combination of municipalities”; and
- (b) inserting after “municipality” in the seventh line “having the greatest population”.

(2) The said section 101 is further amended by adding thereto the following subsection:

(2) Despite section 100, if the area of a rural separate school zone is not in a township or territory without municipal organization, in the year of a regular election the *Municipal Elections Act* applies with necessary modifications to the election of trustees of the rural separate school board, except that the oath to be taken by the voter shall be: Application of R.S.O. 1980, c. 308

You swear that you are the person named (*or intended to be named*) in the list of voters now shown to you (*showing the list to the voter*); That you are eighteen years of age; That you are a Roman Catholic separate school elector; That you have not voted before at this election; That you have not, directly or indirectly, received any reward or gift and do not expect to receive any for the vote which you tender at this election. So help you God.

17. Section 102 of the said Act is repealed and the following substituted therefor:

102.—(1) If territory without municipal organization is part of a combined separate school zone and the election of Secretary of board as returning officer

R.S.O. 1980,
c. 308

trustees of the board for a part of the combined zone is conducted under the *Municipal Elections Act*, the secretary of the board shall be the returning officer and shall perform all the duties of a municipal clerk in the election for the territory without municipal organization.

Reporting of
vote

(2) The secretary of the board shall report forthwith the vote recorded in the territory to the returning officer for the municipality having the greatest population in the electoral area, of which the territory without municipal organization forms part.

Reporting if
no municipi-
pality

(3) If there is no municipality in the electoral area, the secretary of the board shall report to the returning officer of the municipality that has the greatest population in the area of jurisdiction of the board and the returning officer shall prepare the final summary and announce the result of the vote.

18.—(1) Clause 103 (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 32, section 34, is amended by striking out “section 93” in the first line and inserting in lieu thereof “subsection 206a (2)”.

(2) Subsection 103 (3) of the said Act is amended by striking out “section 93 or 100” in the sixth line and inserting in lieu thereof “section 100 or subsection 206a (2)”.

(3) Subsection 103 (4) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 15, is further amended by,

- (a) striking out “and the board shall be deemed to be an urban board and” in the fifth and sixth lines; and
- (b) striking out “an urban combined” in the sixth and seventh lines and by inserting in lieu thereof “one”.

(4) Subsection 103 (5) of the said Act is amended by striking out at the end thereof “and the board of the combined separate school zone shall be deemed to be an urban separate school board”.

(5) Subsection 103 (6) of the said Act is amended by striking out “sections 93, 94 and 95” in the third and fourth lines and inserting in lieu thereof “section 95 and subsections 101 (2) and 206a (2)”.

(6) Subsection 103 (7) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 15, is further

amended by striking out “section 93” in the fifth line and inserting in lieu thereof “subsection 206a (2)”.

(7) Subsection 103 (9) of the said Act is repealed.

19.—(1) Subsection 105 (1) of the said Act is repealed and the following substituted therefor:

(1) Each area that prior to the 31st day of December, 1989 is designated by the regulations under subsection (2) shall on the 1st day of January, 1990 be one separate school zone. Separate
school zones

(2) Clauses 105 (2) (a) and (b) of the said Act are repealed and the following substituted therefor:

- (a) designating, as a county or district combined separate school zone, all or part of one or more municipalities, localities, counties, regional municipalities, district municipalities or territory without municipal organization or a combination thereof and designating the name of the area;
- (b) altering the boundaries of a designated area, referred to in clause (a) and, if any part of territory without municipal organization is attached to the area, designating the part as a district municipality or attaching it to a district municipality.

(3) Clause 105 (2) (d) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 16, is repealed and the following substituted therefor:

- (d) providing for representation if the boundaries of a designated area are altered;
- (e) combining two or more adjoining county or district combined separate school zones and providing that the board of the combined zone shall be a county or district combined separate school zone.

(4) Subsection 105 (3) of the said Act is amended by striking out “the centre of” in the second line.

(5) Subsection 105 (5) of the said Act is amended by striking out “the centre of” in the first line.

20.—(1) Subsection 106 (1) of the said Act is amended by striking out “Where the board of a combined separate school zone in the territorial districts applies to the Minister to have the zone made a district combined separate school zone and the

board become a district combined separate school board” in the first, second, third, fourth and fifth lines and by striking out “such” in the seventh line and inserting in lieu thereof “a combined separate school”.

(2) Section 106 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 17, is further amended by adding thereto the following subsection:

Regulation

(2) If the board of a combined separate school zone in the territorial districts applies to the Minister to extend the boundaries of the combined separate school zone so as to include parcels of land on which a separate school zone cannot be established because of the operation of subsection 83 (1), the Lieutenant Governor in Council may by regulation extend the boundaries of the combined separate school zone.

21. Sections 107 and 108 of the said Act are repealed.

22. The said Act is further amended by adding thereto the following section:

School to remain school of board

110a. Despite sections 109 and 110, a school that was in the area of jurisdiction of a county or district combined separate school board on the 31st day of December, 1989 shall be a school of the board on the 1st day of January, 1990 and shall so remain unless otherwise determined by the board.

23. Subsection 112 (1) of the said Act is repealed and the following substituted therefor:

Deemed district municipality

(1) A part of territory without municipal organization that is in an area designated by the regulations made under subsection 105 (2) shall be deemed to be a district municipality for district combined separate school purposes.

24. Section 114 of the said Act is repealed.

25. Section 116 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 22 and 1989, chapter 1, section 11, is repealed.

26. Section 117 of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 12, is repealed.

27. Subsection 118 (1) of the said Act is repealed.

28. Section 121 of the said Act is repealed.

29.—(1) Subsection 126 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is repealed and the following substituted therefor:

(1) In this section, “partnership” means partnership within the meaning of the *Partnerships Act*. Definition
R.S.O. 1980,
c. 370

(1a) This section does not apply to a public corporation within the meaning of section 126a. Application

(1b) Subject to subsection (5), a corporation or partnership by notice to the assessment commissioner in a form prescribed under the *Assessment Act* may require the whole or any part of its assessment to be entered, rated and assessed for separate school purposes. Right of
corporation
to support
separate
schools
R.S.O. 1980,
c. 31

(2) Subsection 126 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

(3) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall enter the corporation or partnership on the assessment roll to be next returned as a separate school supporter with respect to the assessment designated in the notice, and the assessment so designated shall be assessed accordingly for separate school purposes and the remainder, if any, of the assessment of the corporation or partnership shall be separately entered and assessed for public school purposes. Duty of
assessment
commissioner

(3) Subsection 126 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

(4) The clerk, upon receipt of the notice from the assessment commissioner, shall enter the corporation or partnership as a separate school supporter in the collector’s roll in respect of the assessment designated in the notice and the proper entries shall be made in the prescribed column for separate school rates, and the assessment so designated shall be assessed accordingly for separate school purposes and the remainder, if any, of the assessment of the corporation or partnership shall be separately entered and assessed for public school purposes. Duty of clerk

(4) Subsection 126 (5) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

Proportion of
assessment

(5) The portion of an assessment that is designated by a corporation or partnership under this section shall not bear a greater proportion to the whole of the assessment than,

- (a) in the case of a corporation, the number of shares held by separate school supporters in the corporation bears to the total number of shares of the corporation issued and outstanding; and
- (b) in the case of a partnership, the interest of partners who are separate school supporters in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment.



(5) Subsection 126 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is amended by,

- (a) inserting after “given” in the first line “by a corporation under this section”;
- (b) striking out at the end thereof “except that, upon appeal, if it is ruled that the notice is not a proper notice, it is void, and the assessment commissioner shall so notify the corporation and mark the notice accordingly”.



(6) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8 and 1986, chapter 21, section 3, is further amended by adding thereto the following subsection:

Idem

(6a) A notice given by a partnership under this section is sufficient if signed by a partner and shall continue in force and be acted upon until it is withdrawn, varied or cancelled by a notice subsequently given by a partner.

(7) Subsection 126 (8) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed.

(8) Subsection 126 (9) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 21, section 3, is amended by inserting after “corporation” in the first line “or partnership”.

30. The said Act is further amended by adding thereto the following section:

Definitions

126a.—(1) In this section and in section 126,

“assessment”, in respect of a corporation or partnership, means the assessment of land under the *Assessment Act* of which the corporation or partnership is either the owner and occupant, or, not being the owner, is the tenant, occupant or actual possessor, and includes the business or other assessment of the corporation or partnership made under that Act; R.S.O. 1980,
c. 31

“municipality” means a city, town, village, township or a public school section, separate school zone or secondary school district that is in territory without municipal organization or that portion of a public school section, separate school zone or secondary school district that is in territory without municipal organization;

“public corporation” means,

- (a) a body corporate that is, by reason of its shares, a reporting issuer within the meaning of the *Securities Act* or that has, by reason of its shares, a status comparable to a reporting issuer under the law of any other jurisdiction, R.S.O. 1980,
c. 466
- (b) a body corporate that issues shares that are traded on any market if the prices at which they are traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation, or
- (c) subject to subsection (2), a body corporate that is, within the meaning of subsections 1 (1) and (2), clause 1 (3) (a) and subsections 1 (4), (5) and (6) of the *Securities Act*, controlled by or is a subsidiary of a body corporate or two or more bodies corporate described in clause (a) or (b); R.S.O. 1980,
c. 466

“residential and farm assessment” means residential and farm assessment as defined in section 220 but, for assessment in the year 1990 for taxation in the year 1991 and for later years, does not include the assessment of real property of public corporations.

(2) For the purposes of this section, the expression “more than 50 per cent of the votes” in the second line of clause 1 (3) (a) of the *Securities Act* shall be deemed to read “50 per cent or more of the votes”. Percentage of
votes

(3) An assessment of a public corporation in a municipality shall be rated and assessed for separate school purposes in the same proportion to the total assessment of the public corpora- Proportion of
assessment
for separate
school
purposes

tion in the municipality as the residential and farm assessment rated and assessed for separate school purposes in the municipality bears to the total residential and farm assessment in the municipality.

Idem

(4) For the purposes of subsection (3), if more than one public school board has jurisdiction in the same municipality, the proportion to be determined shall be the proportion of the assessment in the portion of the municipality within the jurisdiction of each board.

Duty of
assessment
commissioner

(5) The assessment commissioner shall enter the public corporation on the assessment roll to be next returned as a separate school supporter with respect to the proportion of its assessment in the municipality determined by subsection (3) and the remainder of the assessment of the public corporation shall be separately entered and assessed for public school purposes.

Supple-
mentary or
omitted
assessments
R.S.O. 1980,
c. 31

(6) An assessment of a public corporation made under section 32 or 33 of the *Assessment Act* shall be rated and assessed for public and separate school purposes in the manner set out in subsections (3) and (5).

Regulations

(7) The Lieutenant Governor in Council may make regulations adjusting the proportions of assessment rated and assessed for public and separate school purposes in each municipality in each year for a period of up to six years commencing with the 1st day of January, 1990 and requiring the assessment commissioner to adjust the rolls accordingly.

Idem

(8) Despite subsections (3) and (5), the proportions of assessment rated and assessed for public and separate school purposes in any year for which a regulation made under subsection (7) is applicable shall be those proportions determined in accordance with such regulation.

Idem

R.S.O. 1980,
c. 302

(9) The Lieutenant Governor in Council may make regulations adjusting the allocation or payment of the tax levied in each year under subsections 161 (12) and (13) of the *Municipal Act* to the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board or to each board, for a period of up to six years commencing with the 1st day of January, 1990 and requiring the council of the municipality that levied the tax to allocate or pay the tax accordingly.

Idem

R.S.O. 1980,
cc. 302, 435,
441, 442

(10) Despite subsections 161 (22a) and 368j (3a) of the *Municipal Act*, subsection 81 (2a) of the *Regional Municipality of Haldimand-Norfolk Act*, subsection 73 (2a) of the *Regional*

Municipality of Sudbury Act and subsection 120 (2a) of the *Regional Municipality of Waterloo Act*, the allocation or payment determined for the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board or for each board for any year to which a regulation made under subsection (9) is applicable shall be that determined in accordance with such regulation.

31.—(1) Subsection 144 (2) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 23, is further amended by striking out “and Part VII-A” in the amendment of 1988 and by striking out “and urban” in the seventh line and in the ninth line.

(2) Section 144 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 23, is further amended by adding thereto the following subsection:

(3) Despite subsection (2), Part VII-A applies to the election of trustees of a Protestant separate school board that is situated in an urban municipality. Idem

32. Subsections 171 (3) and (5) of the said Act are repealed.

33.—(1) The definition of “board” in subsection 206a (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by striking out “an urban separate school board” in the first and second lines.

(2) Clause 206a (3) (a) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by inserting after “105 (2)” in the second line “or 106 (1) or 106 (2)”.

(3) Clause 206a (3) (b) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is repealed.

(4) Rule 4 of subsection 206a (6) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by striking out “an urban separate school board” in the second line.

34. Section 220 of the said Act is repealed and the following substituted therefor:

220. In sections 221, 222 and 223,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal or regional corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll, except the assessments for real property mentioned in clauses (a) and (c) of the definition of “commercial assessment”.

35.—(1) Subsection 227 (3) of the said Act is amended by striking out “that is situated within 4.8 kilometres of the trailer and within the municipality or a municipality contiguous thereto” in the fourth, fifth and sixth lines and inserting in lieu thereof “that is operated by the separate school board of the separate school zone in which the trailer is located”.

(2) Clause 227 (3) (a) of the said Act is amended by striking out “that is within 4.8 kilometres of the separate school” in the fourth and fifth lines and inserting in lieu thereof “that is in the separate school zone”.

(3) Clause 227 (3) (b) of the said Act is amended by striking out “within 4.8 kilometres of the separate school” at the end thereof and inserting in lieu thereof “in the separate school zone”.

36. Subsection 228 (2) of the said Act is amended by striking out “within 4.8 kilometres of the trailer” in the seventh line and inserting in lieu thereof “operated by the separate school board of the separate school zone in which the trailer is located”.

37. Clauses (c) and (d) of the definition of “board” in section 257a of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 1, are repealed.

38. Clauses (c) and (d) of the definition of “board” in section 277c of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 11, are repealed.

39. For the purposes of clause 196 (1) (c) of the *Education Act*, for the period from the 1st day of January, 1990 until the 30th day of November, 1991, the area of jurisdiction of a school board shall be deemed to include the area of jurisdiction of the board as it existed on the 31st day of December, 1989. Transition

40. Despite subsections 1 (2) and (3), sections 11, 12 and 13 and subsection 33 (4) of this Act, the provisions for trustee representation of a board that prior to the 1st day of December, 1989 was an urban separate school board shall continue in effect until the 30th day of November, 1991. Transition

41.—(1) Subsection 13 (1) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 2, 1982, chapter 56, section 1 and 1988, chapter 47, section 80, is further amended by adding thereto the following paragraph:

20. In the case of a corporation, whether the corporation is a public corporation for the purposes of section 126a of the *Education Act* or section 18a of the *Ottawa-Carleton French-Language School Board Act*, 1988. R.S.O. 1980,
c. 129
1988, c. 47

(2) Subsection 13 (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 47, section 2 and amended by 1988, chapter 20, section 20, is repealed and the following substituted therefor:

- (4) In the preparation of the assessment roll, the assessment commissioner, in determining the names and school support of those persons entitled to direct taxes for school support purposes, shall be guided by the index books provided for in the *Education Act*, by the applications for direction of school taxes received and approved by the assessment commissioner under section 15 of this Act and by the notices received under section 126 of the *Education Act* and section 18 of the *Ottawa-Carleton French-Language School Board Act*, 1988. School
support

R.S.O. 1980,
c. 129

1988, c. 47

42. Section 17 of *The Metropolitan Separate School Board Act*, 1953, being chapter 119, as re-enacted by the Statutes of Ontario, 1988, chapter 27, section 38, is repealed and the following substituted therefor:

- 17.** Except as otherwise provided in this Act, the Metropolitan Board shall be a county combined separate school board within the meaning of the *Education Act* and with respect to the district shall enjoy all the rights, powers and Metropolitan
Board to be
county
combined
separate
school board
R.S.O. 1980,
c. 129

privileges of and be subject to all the obligations imposed upon a county combined separate school board by that Act.

43.—(1) Subsection 161 (18) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by striking out “separate” in the third line.

(2) Subsection 161 (21) of the said Act is amended by striking out “separate” in the fourth line.

(3) Section 161 of the said Act is amended by adding thereto the following subsections:

Idem

(22a) Notwithstanding subsection (22), that portion of the tax levied under subsections (12) and (13) to be allocated to public school boards shall be shared among all school boards having jurisdiction in the municipality in the proportion that the share of the residential and farm assessment of each school board in the municipality in the preceding year bears to the whole of the residential and farm assessment in the municipality in the preceding year.

Deemed
school boards

(22b) For purposes of subsection (22a), in the case of area municipalities within The Regional Municipality of Ottawa-Carleton, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board shall each be deemed to be a school board having jurisdiction in the municipality.

(4) Subsection 161 (23) of the said Act is amended by inserting after “subsection (22)” in the first line “and subsection (22a)”.

(5) Subsection 161 (24) of the said Act is amended by inserting after “subsection (22)” in the first line “or to each school board under subsection (22a)” and by inserting after “body” in the second line “or school board”.

(6) Section 368j of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards

(3a) Notwithstanding subsections (1) and (2), that portion of the tax levied by a lower tier municipality, city, separated town or separated township in a county under subsections 161 (12) and (13) to be paid to the appropriate public school boards shall be shared among all school boards having jurisdiction in the lower tier municipality, city, separated town or separated township, as the case may be, in the proportion that the share of each school board of the residential and farm

assessment in the lower tier municipality, city, separated town or separated township bears to the whole of the residential and farm assessment in the lower tier municipality, city, separated town or separated township.

(7) Subsection 368j (4) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is amended by,

- (a) striking out “public” in the third line; and
- (b) striking out “or (2)” at the end thereof and inserting in lieu thereof “(2) or (3a)”.

(8) Clause 368k (1) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is repealed and the following substituted therefor:

- (b) a school board under subsection 368j (3a); or

.

44.—(1) Section 81 of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is amended by adding thereto the following subsection:

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to the appropriate public school boards shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

Payment of
portion of
telephone
and telegraph
tax to school
boards
R.S.O. 1980,
c. 302

(2) Subsection 81 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is amended by striking out “public” in the fourth line and by adding at the end thereof “or (2a)”.

(3) Clause 81a (1) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is repealed and the following substituted therefor:

- (b) a school board under subsection 81 (2a); or

.

45.—(1) Section 73 of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards

R.S.O. 1980,
c. 302

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to The Sudbury Board of Education shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

(2) Subsection 73 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by inserting after “Corporation” in the third line “The Sudbury District Roman Catholic Separate School Board” and by adding at the end thereof “or (2a)”.

(3) Subsection 73a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by,

(a) striking out “or to the Regional Corporation” in the second and third lines and inserting in lieu thereof “or 73 (1) or to The Sudbury District Roman Catholic Separate School Board”; and

(b) striking out “73 (1)” in the fourth line and inserting in lieu thereof “73 (2a)”.

(4) Subsection 73a (3) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by inserting after “Education” in the first line “or The Sudbury District Roman Catholic Separate School Board, or each of them”.

46.—(1) Section 120 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards

R.S.O. 1980,
c. 302

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to The Waterloo County Board of Education shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm

assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

(2) Subsection 120 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is amended by inserting after “Corporation” in the third line “The Waterloo Region Roman Catholic Separate School Board” and by adding at the end thereof “or (2a)”.

(3) Clause 120a (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is repealed and the following substituted therefor:

(b) a school board under subsection 120 (2a); or

.

47.—(1) This Act, except sections 25, 26 and 27 and sub-Commencement
section 41 (1), shall be deemed to have come into force on the
1st day of December, 1989.

(2) Sections 25, 26 and 27 come into force on a day to be Idem
named by proclamation of the Lieutenant Governor.

(3) Subsection 41 (1) comes into force on the 1st day of Idem
December, 1990.

48. The short title of this Act is the *Education Statute Law* Short title
Amendment Act, 1989.

Bill 64

*(Chapter 65
Statutes of Ontario, 1989)*

An Act to amend the Education Act and certain other Acts relating to Education Assessment

The Hon. S. Conway
Minister of Education



<i>1st Reading</i>	October 19th, 1989
<i>2nd Reading</i>	November 8th, 1989
<i>3rd Reading</i>	December 14th, 1989
<i>Royal Assent</i>	December 14th, 1989

Bill 64

1989

**An Act to amend the Education Act and
certain other Acts relating to Education Assessment**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraphs 9 and 16 of subsection 1 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

9. “county combined separate school zone” means a separate school zone that is an area designated by the regulations that is not in a territorial district;

.

16. “district combined separate school zone” means a separate school zone that is an area designated by the regulations in a territorial district.

(2) Paragraph 47 of the said subsection 1 (1) is amended by striking out “in a township or territory without municipal organization” in the second and third lines.

(3) Paragraphs 71 and 72 of the said subsection 1 (1) are repealed.

2. Section 47 of the said Act is amended by adding thereto the following subsections:

(4a) If on the 31st day of December, 1989 a pupil is enrolled in a school that the pupil has a right to attend and on the 1st day of January, 1990 the pupil, because of alterations to school board boundaries, no longer has a right to attend the school under any other provision of this Part, the pupil has the right to attend the school until the pupil completes his or her education in the school. ^{Idem}

Agreement
re
transportation

(4b) The board of which a pupil referred to in subsection (4a) is qualified to be a resident pupil may enter into an agreement with the board that operates the school, referred to in subsection (4a), in respect of the transportation of the pupil to and from the school.

3.—(1) Clause 54 (1) (f) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 4, is repealed and the following substituted therefor:

(f) provide for representation if the boundaries of a school division are altered.

(2) Clause 54 (2) (d) of the said Act is amended by striking out “subject to subsections 56 (4) to (8)” in the third and fourth lines.

4. Section 80 of the said Act is repealed and the following substituted therefor:

Boundaries
of zones

80.—(1) Unless otherwise determined in accordance with regulations made under subsections 105 (2) and 106 (2), the boundaries of a separate school zone shall, in accordance with sections 83 and 87, be the boundaries of,

- (a) a municipality;
- (b) a geographic township;
- (c) a combination of municipalities;
- (d) a combination of geographic townships; or
- (e) a combination of the areas referred to in clauses (a) to (d).

Zones not in
municipalities
or geographic
townships

(2) The boundaries of a separate school zone, in those parts of the territorial districts that are neither geographic townships nor municipalities, shall be the boundaries of a 9.6 kilometre square of land of which two sides are parallel to a line of latitude.

Zone
description

(3) If a separate school zone is a 9.6 kilometre square of land, the location of the zone shall be determined by the latitude and longitude of its northwest corner.

Deemed
inclusion to
zones

(4) If on the 31st day of December, 1989 no part of a separate school zone is a part of an area designated under subsection 105 (2) and if the separate school zone includes a part of a municipality or geographic township, the separate school

zone shall on the 1st day of January, 1990 be deemed to include all of the municipality or geographic township.

5. Subsections 81 (1), (2), (3) and (5) of the said Act are repealed.

6. Section 82 of the said Act is repealed.

7.—(1) Subsection 83 (1) of the said Act is repealed and the following substituted therefor:

(1) A public meeting of persons desiring to establish a separate school zone may be convened by,

Meeting to
establish a
separate
school zone

- (a) not fewer than five heads of families, being Roman Catholics and being householders or freeholders resident within a municipality or a geographic township that is not within an area designated by the regulations made under subsection 105 (2), who desire to establish the area of the municipality or geographic township as a separate school zone;
- (b) not fewer than ten heads of families being Roman Catholics and being householders or freeholders resident within a 9.6 kilometre square of land, that is not part of a municipality, a geographic township, a separate school zone established under this subsection or a combined separate school zone, who desire to establish the square of land as a separate school zone; or
- (c) not fewer than five heads of families being Roman Catholics and being householders or freeholders resident within a 9.6 kilometre square of land, that is not part of a municipality, a geographic township, a separate school zone established under this subsection or a combined separate school zone, who desire to establish the square of land as a separate school zone and unite the zone with one or more separate school zones.

(2) Clauses 83 (2) (b) and (c) of the said Act are repealed and the following substituted therefor:

- (b) pass a motion to determine that the area of the municipality or geographic township, as the case requires, be established as a separate school zone.

(3) Clause 83 (2) (d) of the said Act is repealed and the following substituted therefor:

- (d) if clause 83 (1) (a) or (b) applies, elect the required number of trustees; and

(4) Subsection 83 (5) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 7, is repealed and the following substituted therefor:

Corporate
name

(5) On and after transmission to the Minister of the documents referred to in subsection (4), the separate school zone is established and the trustees named therein are a body corporate under the name of "The Roman Catholic Separate School Board" (inserting the name selected by the board and approved by the Minister).

8.—(1) Subsection 84 (1) of the said Act is repealed.

(2) Subsection 84 (2) of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 8, is repealed.

(3) Subsection 84 (3) of the said Act is amended by striking out "subsection (1)" in the first and second lines and inserting in lieu thereof "subsection 83 (1)".

(4) Subsection 84 (4) of the said Act is amended by striking out "clause (1) (b)" in the second line and inserting in lieu thereof "clause 83 (1) (c)".

9. Section 85 of the said Act is repealed and the following substituted therefor:

Right to vote
in year of
establishment
of zone

85. A Roman Catholic who is a householder or freeholder, who is eighteen years of age and who desires to establish the area in which the Roman Catholic is resident as a separate school zone under section 83, is entitled, in the year in which the separate school zone is established, to vote on any matter that relates to the separate school.

10. Subsection 88 (2) of the said Act is repealed and the following substituted therefor:

Qualified
voters
detaching a
separate
school zone

(2) The persons who are entitled to vote on the question are the supporters of the combined separate school who reside in the portion of the combined separate school zone that it is proposed to detach.

11. Subsection 90 (2a) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 32, section 27, is repealed.

12. Section 93 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 32, section 29, is repealed.

13. Section 94 of the said Act is repealed.

14. The said Act is amended by inserting before section 95 the following heading:

Separate School Electors

15. Subsection 97 (2) of the said Act is repealed and the following substituted therefor:

(2) The term of office of trustees of a rural separate school board shall commence on the 1st day of December in the year of a regular election.

Term of
office

16.—(1) Section 101 of the said Act is amended by,

- (a) striking out “where the centre of a rural separate school zone is in a municipality” in the first and second lines and inserting in lieu thereof “if the rural separate school zone is a municipality or combination of municipalities”; and
- (b) inserting after “municipality” in the seventh line “having the greatest population”.

(2) The said section 101 is further amended by adding thereto the following subsection:

(2) Despite section 100, if the area of a rural separate school zone is not in a township or territory without municipal organization, in the year of a regular election the *Municipal Elections Act* applies with necessary modifications to the election of trustees of the rural separate school board, except that the oath to be taken by the voter shall be:

Application
of
R.S.O. 1980,
c. 308

You swear that you are the person named (*or* intended to be named) in the list of voters now shown to you (*showing the list to the voter*); That you are eighteen years of age; That you are a Roman Catholic separate school elector; That you have not voted before at this election; That you have not, directly or indirectly, received any reward or gift and do not expect to receive any for the vote which you tender at this election. So help you God.

17. Section 102 of the said Act is repealed and the following substituted therefor:

102.—(1) If territory without municipal organization is part of a combined separate school zone and the election of

Secretary of
board as
returning
officer

R.S.O. 1980,
c. 308

trustees of the board for a part of the combined zone is conducted under the *Municipal Elections Act*, the secretary of the board shall be the returning officer and shall perform all the duties of a municipal clerk in the election for the territory without municipal organization.

Reporting of
vote

(2) The secretary of the board shall report forthwith the vote recorded in the territory to the returning officer for the municipality having the greatest population in the electoral area, of which the territory without municipal organization forms part.

Reporting if
no municipi-
pality

(3) If there is no municipality in the electoral area, the secretary of the board shall report to the returning officer of the municipality that has the greatest population in the area of jurisdiction of the board and the returning officer shall prepare the final summary and announce the result of the vote.

18.—(1) Clause 103 (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 32, section 34, is amended by striking out “section 93” in the first line and inserting in lieu thereof “subsection 206a (2)”.

(2) Subsection 103 (3) of the said Act is amended by striking out “section 93 or 100” in the sixth line and inserting in lieu thereof “section 100 or subsection 206a (2)”.

(3) Subsection 103 (4) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 15, is further amended by,

- (a) striking out “and the board shall be deemed to be an urban board and” in the fifth and sixth lines; and
- (b) striking out “an urban combined” in the sixth and seventh lines and by inserting in lieu thereof “one”.

(4) Subsection 103 (5) of the said Act is amended by striking out at the end thereof “and the board of the combined separate school zone shall be deemed to be an urban separate school board”.

(5) Subsection 103 (6) of the said Act is amended by striking out “sections 93, 94 and 95” in the third and fourth lines and inserting in lieu thereof “section 95 and subsections 101 (2) and 206a (2)”.

(6) Subsection 103 (7) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 15, is further

amended by striking out “section 93” in the fifth line and inserting in lieu thereof “subsection 206a (2)”.

(7) Subsection 103 (9) of the said Act is repealed.

19.—(1) Subsection 105 (1) of the said Act is repealed and the following substituted therefor:

(1) Each area that prior to the 31st day of December, 1989 is designated by the regulations under subsection (2) shall on the 1st day of January, 1990 be one separate school zone. Separate
school zones

(2) Clauses 105 (2) (a) and (b) of the said Act are repealed and the following substituted therefor:

- (a) designating, as a county or district combined separate school zone, all or part of one or more municipalities, localities, counties, regional municipalities, district municipalities or territory without municipal organization or a combination thereof and designating the name of the area;
- (b) altering the boundaries of a designated area, referred to in clause (a) and, if any part of territory without municipal organization is attached to the area, designating the part as a district municipality or attaching it to a district municipality.

(3) Clause 105 (2) (d) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 16, is repealed and the following substituted therefor:

- (d) providing for representation if the boundaries of a designated area are altered;
- (e) combining two or more adjoining county or district combined separate school zones and providing that the board of the combined zone shall be a county or district combined separate school zone.

(4) Subsection 105 (3) of the said Act is amended by striking out “the centre of” in the second line.

(5) Subsection 105 (5) of the said Act is amended by striking out “the centre of” in the first line.

20.—(1) Subsection 106 (1) of the said Act is amended by striking out “Where the board of a combined separate school zone in the territorial districts applies to the Minister to have the zone made a district combined separate school zone and the

board become a district combined separate school board” in the first, second, third, fourth and fifth lines and by striking out “such” in the seventh line and inserting in lieu thereof “a combined separate school”.

(2) Section 106 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 17, is further amended by adding thereto the following subsection:

Regulation

(2). If the board of a combined separate school zone in the territorial districts applies to the Minister to extend the boundaries of the combined separate school zone so as to include parcels of land on which a separate school zone cannot be established because of the operation of subsection 83 (1), the Lieutenant Governor in Council may by regulation extend the boundaries of the combined separate school zone.

21. Sections 107 and 108 of the said Act are repealed.

22. The said Act is further amended by adding thereto the following section:

School to
remain
school of
board

110a. Despite sections 109 and 110, a school that was in the area of jurisdiction of a county or district combined separate school board on the 31st day of December, 1989 shall be a school of the board on the 1st day of January, 1990 and shall so remain unless otherwise determined by the board.

23. Subsection 112 (1) of the said Act is repealed and the following substituted therefor:

Deemed
district
municipality

(1) A part of territory without municipal organization that is in an area designated by the regulations made under subsection 105 (2) shall be deemed to be a district municipality for district combined separate school purposes.

24. Section 114 of the said Act is repealed.

25. Section 116 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 22 and 1989, chapter 1, section 11, is repealed.

26. Section 117 of the said Act, as amended by the Statutes of Ontario, 1989, chapter 1, section 12, is repealed.

27. Subsection 118 (1) of the said Act is repealed.

28. Section 121 of the said Act is repealed.

29.—(1) Subsection 126 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is repealed and the following substituted therefor:

(1) In this section, “partnership” means partnership within the meaning of the *Partnerships Act*.

Definition
R.S.O. 1980,
c. 370

(1a) This section does not apply to a public corporation within the meaning of section 126a.

Application

(1b) Subject to subsection (5), a corporation or partnership by notice to the assessment commissioner in a form prescribed under the *Assessment Act* may require the whole or any part of its assessment to be entered, rated and assessed for separate school purposes.

Right of
corporation
to support
separate
schools
R.S.O. 1980,
c. 31

(2) Subsection 126 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

(3) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall enter the corporation or partnership on the assessment roll to be next returned as a separate school supporter with respect to the assessment designated in the notice, and the assessment so designated shall be assessed accordingly for separate school purposes and the remainder, if any, of the assessment of the corporation or partnership shall be separately entered and assessed for public school purposes.

Duty of
assessment
commissioner

(3) Subsection 126 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

(4) The clerk, upon receipt of the notice from the assessment commissioner, shall enter the corporation or partnership as a separate school supporter in the collector's roll in respect of the assessment designated in the notice and the proper entries shall be made in the prescribed column for separate school rates, and the assessment so designated shall be assessed accordingly for separate school purposes and the remainder, if any, of the assessment of the corporation or partnership shall be separately entered and assessed for public school purposes.

Duty of clerk

(4) Subsection 126 (5) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed and the following substituted therefor:

Proportion of
assessment

(5) The portion of an assessment that is designated by a corporation or partnership under this section shall not bear a greater proportion to the whole of the assessment than,

- (a) in the case of a corporation, the number of shares held by separate school supporters in the corporation bears to the total number of shares of the corporation issued and outstanding; and
- (b) in the case of a partnership, the interest of partners who are separate school supporters in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment.

(5) Subsection 126 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is amended by,

- (a) inserting after “given” in the first line “by a corporation under this section”;
- (b) striking out at the end thereof “except that, upon appeal, if it is ruled that the notice is not a proper notice, it is void, and the assessment commissioner shall so notify the corporation and mark the notice accordingly”.

(6) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8 and 1986, chapter 21, section 3, is further amended by adding thereto the following subsection:

Idem

(6a) A notice given by a partnership under this section is sufficient if signed by a partner and shall continue in force and be acted upon until it is withdrawn, varied or cancelled by a notice subsequently given by a partner.

(7) Subsection 126 (8) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 47, section 21, is repealed.

(8) Subsection 126 (9) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 21, section 3, is amended by inserting after “corporation” in the first line “or partnership”.

30. The said Act is further amended by adding thereto the following section:

Definitions

126a.—(1) In this section and in section 126,

“assessment”, in respect of a corporation or partnership, means the assessment of land under the *Assessment Act* of which the corporation or partnership is either the owner and occupant, or, not being the owner, is the tenant, occupant or actual possessor, and includes the business or other assessment of the corporation or partnership made under that Act; R.S.O. 1980, c. 31

“municipality” means a city, town, village, township or a public school section, separate school zone or secondary school district that is in territory without municipal organization or that portion of a public school section, separate school zone or secondary school district that is in territory without municipal organization;

“public corporation” means,

- (a) a body corporate that is, by reason of its shares, a reporting issuer within the meaning of the *Securities Act* or that has, by reason of its shares, a status comparable to a reporting issuer under the law of any other jurisdiction, R.S.O. 1980, c. 466
- (b) a body corporate that issues shares that are traded on any market if the prices at which they are traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation, or
- (c) subject to subsection (2), a body corporate that is, within the meaning of subsections 1 (1) and (2), clause 1 (3) (a) and subsections 1 (4), (5) and (6) of the *Securities Act*, controlled by or is a subsidiary of a body corporate or two or more bodies corporate described in clause (a) or (b); R.S.O. 1980, c. 466

“residential and farm assessment” means residential and farm assessment as defined in section 220 but, for assessment in the year 1990 for taxation in the year 1991 and for later years, does not include the assessment of real property of public corporations.

(2) For the purposes of this section, the expression “more than 50 per cent of the votes” in the second line of clause 1 (3) (a) of the *Securities Act* shall be deemed to read “50 per cent or more of the votes”. Percentage of votes

(3) An assessment of a public corporation in a municipality shall be rated and assessed for separate school purposes in the same proportion to the total assessment of the public corpora- Proportion of assessment for separate school purposes

tion in the municipality as the residential and farm assessment rated and assessed for separate school purposes in the municipality bears to the total residential and farm assessment in the municipality.

Idem

(4) For the purposes of subsection (3), if more than one public school board has jurisdiction in the same municipality, the proportion to be determined shall be the proportion of the assessment in the portion of the municipality within the jurisdiction of each board.

Duty of
assessment
commissioner

(5) The assessment commissioner shall enter the public corporation on the assessment roll to be next returned as a separate school supporter with respect to the proportion of its assessment in the municipality determined by subsection (3) and the remainder of the assessment of the public corporation shall be separately entered and assessed for public school purposes.

Supple-
mentary or
omitted
assessments
R.S.O. 1980,
c. 31

(6) An assessment of a public corporation made under section 32 or 33 of the *Assessment Act* shall be rated and assessed for public and separate school purposes in the manner set out in subsections (3) and (5).

Regulations

(7) The Lieutenant Governor in Council may make regulations adjusting the proportions of assessment rated and assessed for public and separate school purposes in each municipality in each year for a period of up to six years commencing with the 1st day of January, 1990 and requiring the assessment commissioner to adjust the rolls accordingly.

Idem

(8) Despite subsections (3) and (5), the proportions of assessment rated and assessed for public and separate school purposes in any year for which a regulation made under subsection (7) is applicable shall be those proportions determined in accordance with such regulation.

Idem

R.S.O. 1980,
c. 302

(9) The Lieutenant Governor in Council may make regulations adjusting the allocation or payment of the tax levied in each year under subsections 161 (12) and (13) of the *Municipal Act* to the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board or to each board, for a period of up to six years commencing with the 1st day of January, 1990 and requiring the council of the municipality that levied the tax to allocate or pay the tax accordingly.

Idem

R.S.O. 1980,
cc. 302, 435,
441, 442

(10) Despite subsections 161 (22a) and 368j (3a) of the *Municipal Act*, subsection 81 (2a) of the *Regional Municipality of Haldimand-Norfolk Act*, subsection 73 (2a) of the *Regional*

Municipality of Sudbury Act and subsection 120 (2a) of the *Regional Municipality of Waterloo Act*, the allocation or payment determined for the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board or for each board for any year to which a regulation made under subsection (9) is applicable shall be that determined in accordance with such regulation.

31.—(1) Subsection 144 (2) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 23, is further amended by striking out “and Part VII-A” in the amendment of 1988 and by striking out “and urban” in the seventh line and in the ninth line.

(2) Section 144 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 27, section 23, is further amended by adding thereto the following subsection:

(3) Despite subsection (2), Part VII-A applies to the election of trustees of a Protestant separate school board that is situated in an urban municipality. Idem

32. Subsections 171 (3) and (5) of the said Act are repealed.

33.—(1) The definition of “board” in subsection 206a (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by striking out “an urban separate school board” in the first and second lines.

(2) Clause 206a (3) (a) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by inserting after “105 (2)” in the second line “or 106 (1) or 106 (2)”.

(3) Clause 206a (3) (b) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is repealed.

(4) Rule 4 of subsection 206a (6) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 27, section 24, is amended by striking out “an urban separate school board” in the second line.

34. Section 220 of the said Act is repealed and the following substituted therefor:

220. In sections 221, 222 and 223,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal or regional corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll, except the assessments for real property mentioned in clauses (a) and (c) of the definition of “commercial assessment”.

35.—(1) Subsection 227 (3) of the said Act is amended by striking out “that is situated within 4.8 kilometres of the trailer and within the municipality or a municipality contiguous thereto” in the fourth, fifth and sixth lines and inserting in lieu thereof “that is operated by the separate school board of the separate school zone in which the trailer is located”.

(2) Clause 227 (3) (a) of the said Act is amended by striking out “that is within 4.8 kilometres of the separate school” in the fourth and fifth lines and inserting in lieu thereof “that is in the separate school zone”.

(3) Clause 227 (3) (b) of the said Act is amended by striking out “within 4.8 kilometres of the separate school” at the end thereof and inserting in lieu thereof “in the separate school zone”.

36. Subsection 228 (2) of the said Act is amended by striking out “within 4.8 kilometres of the trailer” in the seventh line and inserting in lieu thereof “operated by the separate school board of the separate school zone in which the trailer is located”.

37. Clauses (c) and (d) of the definition of “board” in section 257a of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 1, are repealed.

38. Clauses (c) and (d) of the definition of “board” in section 277c of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 29, section 11, are repealed.

39. For the purposes of clause 196 (1) (c) of the *Education Act*, for the period from the 1st day of January, 1990 until the 30th day of November, 1991, the area of jurisdiction of a school board shall be deemed to include the area of jurisdiction of the board as it existed on the 31st day of December, 1989. Transition

40. Despite subsections 1 (2) and (3), sections 11, 12 and 13 and subsection 33 (4) of this Act, the provisions for trustee representation of a board that prior to the 1st day of December, 1989 was an urban separate school board shall continue in effect until the 30th day of November, 1991. Transition

41.—(1) Subsection 13 (1) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 2, 1982, chapter 56, section 1 and 1988, chapter 47, section 80, is further amended by adding thereto the following paragraph:

20. In the case of a corporation, whether the corporation is a public corporation for the purposes of section 126a of the *Education Act* or section 18a of the *Ottawa-Carleton French-Language School Board Act*, 1988. R.S.O. 1980,
c. 129
1988, c. 47

(2) Subsection 13 (4) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 47, section 2 and amended by 1988, chapter 20, section 20, is repealed and the following substituted therefor:

- (4) In the preparation of the assessment roll, the assessment commissioner, in determining the names and school support of those persons entitled to direct taxes for school support purposes, shall be guided by the index books provided for in the *Education Act*, by the applications for direction of school taxes received and approved by the assessment commissioner under section 15 of this Act and by the notices received under section 126 of the *Education Act* and section 18 of the *Ottawa-Carleton French-Language School Board Act*, 1988. School
support

R.S.O. 1980,
c. 129

1988, c. 47

42. Section 17 of *The Metropolitan Separate School Board Act*, 1953, being chapter 119, as re-enacted by the Statutes of Ontario, 1988, chapter 27, section 38, is repealed and the following substituted therefor:

- 17.** Except as otherwise provided in this Act, the Metropolitan Board shall be a county combined separate school board within the meaning of the *Education Act* and with respect to the district shall enjoy all the rights, powers and Metropolitan
Board to be
county
combined
separate
school board
R.S.O. 1980,
c. 129

privileges of and be subject to all the obligations imposed upon a county combined separate school board by that Act.

43.—(1) Subsection 161 (18) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by striking out “separate” in the third line.

(2) Subsection 161 (21) of the said Act is amended by striking out “separate” in the fourth line.

(3) Section 161 of the said Act is amended by adding thereto the following subsections:

Idem

(22a) Notwithstanding subsection (22), that portion of the tax levied under subsections (12) and (13) to be allocated to public school boards shall be shared among all school boards having jurisdiction in the municipality in the proportion that the share of the residential and farm assessment of each school board in the municipality in the preceding year bears to the whole of the residential and farm assessment in the municipality in the preceding year.

Deemed
school boards

(22b) For purposes of subsection (22a), in the case of area municipalities within The Regional Municipality of Ottawa-Carleton, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board shall each be deemed to be a school board having jurisdiction in the municipality.

(4) Subsection 161 (23) of the said Act is amended by inserting after “subsection (22)” in the first line “and subsection (22a)”.

(5) Subsection 161 (24) of the said Act is amended by inserting after “subsection (22)” in the first line “or to each school board under subsection (22a)” and by inserting after “body” in the second line “or school board”.

(6) Section 368j of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards

(3a) Notwithstanding subsections (1) and (2), that portion of the tax levied by a lower tier municipality, city, separated town or separated township in a county under subsections 161 (12) and (13) to be paid to the appropriate public school boards shall be shared among all school boards having jurisdiction in the lower tier municipality, city, separated town or separated township, as the case may be, in the proportion that the share of each school board of the residential and farm

assessment in the lower tier municipality, city, separated town or separated township bears to the whole of the residential and farm assessment in the lower tier municipality, city, separated town or separated township.

(7) Subsection 368j (4) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is amended by,

- (a) striking out “public” in the third line; and
- (b) striking out “or (2)” at the end thereof and inserting in lieu thereof “(2) or (3a)”.

(8) Clause 368k (1) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 2, is repealed and the following substituted therefor:

- (b) a school board under subsection 368j (3a); or

44.—(1) Section 81 of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is amended by adding thereto the following subsection:

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to the appropriate public school boards shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

Payment of
portion of
telephone
and telegraph
tax to school
boards
R.S.O. 1980,
c. 302

(2) Subsection 81 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is amended by striking out “public” in the fourth line and by adding at the end thereof “or (2a)”.

(3) Clause 81a (1) (b) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 16, section 2, is repealed and the following substituted therefor:

- (b) a school board under subsection 81 (2a); or

45.—(1) Section 73 of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards
R.S.O. 1980,
c. 302

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to The Sudbury Board of Education shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

(2) Subsection 73 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by inserting after “Corporation” in the third line “The Sudbury District Roman Catholic Separate School Board” and by adding at the end thereof “or (2a)”.

(3) Subsection 73a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by,

- (a) striking out “or to the Regional Corporation” in the second and third lines and inserting in lieu thereof “or 73 (1) or to The Sudbury District Roman Catholic Separate School Board”; and
- (b) striking out “73 (1)” in the fourth line and inserting in lieu thereof “73 (2a)”.

(4) Subsection 73a (3) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 19, section 1, is amended by inserting after “Education” in the first line “or The Sudbury District Roman Catholic Separate School Board, or each of them”.

46.—(1) Section 120 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is amended by adding thereto the following subsection:

Payment of
portion of
telephone
and telegraph
tax to school
boards
R.S.O. 1980,
c. 302

(2a) Notwithstanding subsection (1), that portion of the tax levied by an area municipality under subsections 161 (12) and (13) of the *Municipal Act* to be paid to The Waterloo County Board of Education shall be shared among all school boards having jurisdiction in the area municipality in the proportion that the share of each school board of the residential and farm

assessment in the area municipality bears to the whole of the residential and farm assessment in the area municipality.

(2) Subsection 120 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is amended by inserting after “Corporation” in the third line “The Waterloo Region Roman Catholic Separate School Board” and by adding at the end thereof “or (2a)”.

(3) Clause 120a (1) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 2, is repealed and the following substituted therefor:

(b) a school board under subsection 120 (2a); or

47.—(1) This Act, except sections 25, 26 and 27 and sub-Commencement
section 41 (1), shall be deemed to have come into force on the 1st day of December, 1989.

(2) Sections 25, 26 and 27 come into force on a day to be Idem
named by proclamation of the Lieutenant Governor.

(3) Subsection 41 (1) comes into force on the 1st day of Idem
December, 1990.

48. The short title of this Act is the *Education Statute Law* Short title
Amendment Act, 1989.

11
16

Bill 65

Government Bill

2ND SESSION, 34TH LEGISLATURE, ONTARIO
38 ELIZABETH II, 1989

Projet de loi 65

du gouvernement

2^e SESSION, 34^e LÉGISLATURE, ONTARIO
38 ELIZABETH II, 1989

Bill 65

**An Act to amend the
Ottawa-Carleton
French-Language
School Board
Act, 1988**

The Hon. S. Conway
Minister of Education

Projet de loi 65

**Loi portant modification
de la Loi de 1988 sur le
Conseil scolaire de
langue française
d'Ottawa-Carleton**

L'honorable S. Conway
ministre de l'Éducation



1st Reading October 19th, 1989
2nd Reading
3rd Reading
Royal Assent

1^{re} lecture 19 octobre 1989
2^e lecture
3^e lecture
sanction royale

EXPLANATORY NOTES

SECTION 1. Section 18 of the Act is amended to permit partnerships to designate portions of their school support to separate schools or to the public sector or to the Roman Catholic sector of The Ottawa-Carleton French-language School Board, by notice to the assessment commissioner.

Subsections 18 (10) and (11) set upper limits on the proportions of an assessment that may be directed to a school system other than a public board.

SECTION 2. Section 18a defines public corporations and requires that their assessment in each area municipality be divided among the school systems in proportion to the support that each such system enjoys from the residential and farm assessment in that area municipality.

Subsection 18a (6) permits the Lieutenant Governor in Council to make regulations adjusting the proportions of assessment rated and assessed for each school system in each area municipality for a period of up to six years, commencing with the 1st day of January, 1990.

NOTES EXPLICATIVES

ARTICLE 1 L'article 18 de la Loi est modifié en vue de permettre aux sociétés en nom collectif de désigner les fractions de leur soutien scolaire qu'elles souhaitent accorder aux écoles séparées, ou à la section publique ou à la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au moyen d'un avis envoyé au commissaire à l'évaluation.

Les paragraphes 18 (10) et (11) fixent les plafonds auxquels est assujettie la fraction d'une évaluation qui peut être accordée à une organisation scolaire autre qu'un conseil d'écoles publiques.

ARTICLE 2 L'article 18a définit le terme «société ouverte» et exige que l'évaluation des sociétés ouvertes dans chaque municipalité de secteur soit répartie entre les organisations scolaires en proportion du soutien provenant de l'évaluation résidentielle et agricole dans cette municipalité de secteur, dont bénéficie chaque organisation scolaire.

Le paragraphe 18a (6) autorise le lieutenant-gouverneur en conseil à rajuster, par règlement, les fractions de l'évaluation imposées et évaluées aux fins de chaque organisation scolaire, dans chaque municipalité de secteur, pour une période d'au plus six ans, à compter du 1^{er} janvier 1990.

Bill 65

1989

**An Act to amend the
Ottawa-Carleton
French-Language School Board Act, 1988**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 18 of the *Ottawa-Carleton French-Language School Board Act, 1988*, being chapter 47, is repealed and the following substituted therefor:

Definition

R.S.O. 1980,
c. 31

18.—(1) In this section and section 18a, “assessment”, in respect of a corporation or partnership, means the assessment under the *Assessment Act* of land of which the corporation or partnership is either the owner and occupant, or not being the owner, is the tenant, occupant or actual possessor, and includes the business or other assessments of the corporation or partnership under that Act. (“évaluation”)

Idem

R.S.O. 1980,
c. 370

(2) In this section, “partnership” means partnership within the meaning of the *Partnerships Act*. (“société en nom collectif”)

Application

(3) This section does not apply to a public corporation within the meaning of section 18a.

School
support,
right of
corporation
or
partnership

(4) Subject to subsections (10) and (11), a corporation or partnership by notice to the assessment commissioner in a form prescribed under the *Assessment Act*, may require the whole or any part of its assessment to be entered, rated and assessed for the purposes of separate schools or the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board, or any combination of them.

Projet de loi 65

1989

Loi portant modification de la Loi de 1988 sur le
Conseil scolaire de langue française
d'Ottawa-Carleton

SA MAJESTÉ, sur l'avis et avec le consentement de
l'Assemblée législative de la province de l'Ontario, décrète ce
qui suit :

1 L'article 18 de la *Loi de 1988 sur le Conseil scolaire de
langue française d'Ottawa-Carleton*, qui constitue le chapitre
47, est abrogé et remplacé par ce qui suit :

18 (1) Dans le présent article et à l'article 18a, «évaluation», en ce qui concerne une personne morale ou une société en nom collectif, s'entend de l'évaluation, prévue par la *Loi sur l'évaluation foncière*, des biens-fonds dont la personne morale ou la société en nom collectif est le propriétaire et l'occupant ou, si elle n'en est pas le propriétaire, dont elle est le locataire, l'occupant ou le possesseur de fait, et s'entend en outre des évaluations commerciales ou autres de la personne morale ou de la société en nom collectif effectuées en vertu de cette loi. («assessment»)

Définition

L.R.O. 1980,
chap. 31

(2) Dans le présent article, «société en nom collectif» s'entend d'une société en nom collectif au sens de la *Loi sur les sociétés en nom collectif*. («partnership»)

Idem

L.R.O. 1980,
chap. 370

(3) Le présent article ne s'applique pas à une société ouverte au sens de l'article 18a.

Champ
d'application

(4) Sous réserve des paragraphes (10) et (11), une personne morale ou une société en nom collectif peut, au moyen d'un avis rédigé selon la formule prescrite par la *Loi sur l'évaluation foncière* et envoyé au commissaire à l'évaluation, demander que la totalité ou une partie de son évaluation soit inscrite, imposée et évaluée aux fins des écoles séparées, ou aux fins de la section publique ou de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, ou d'une combinaison de celles-ci.

Droit des per-
sonnes mora-
les ou des
sociétés en
nom collectif
en matière
de soutien
scolaire

Duty of
assessment
commissioner

(5) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall enter the corporation or partnership on the assessment roll to be next returned with the school support with respect to its assessment for each school system designated in the notice entered separately.

Idem

(6) The assessment commissioner shall separately enter and assess for public school purposes any assessment of the corporation or partnership not designated in the notice.

Copy of
notice to
clerk

(7) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall forward a copy of the notice to the clerk of the area municipality in which the land referred to in the notice is situate.

Duty of clerk

(8) Upon receipt of the notice from the assessment commissioner, the clerk shall enter the corporation or partnership in the collector's roll with the school support with respect to its assessment for each school system designated in the notice entered separately.

Idem

(9) The clerk shall separately enter and show as assessed for public school purposes any assessment of the corporation or partnership not designated in the notice.

How
corporation's
proportion
settled

(10) The portions of an assessment of a corporation that are rated and assessed other than for public school purposes shall not bear a greater proportion to the whole assessment of the corporation than,

- (a) in the case of the Roman Catholic sector of The Ottawa-Carleton French-language School Board, the number of shares held in the corporation by French-speaking persons who are Roman Catholics bears to the total number of shares of the corporation issued and outstanding;
- (b) in the case of The Ottawa Roman Catholic Separate School Board or The Carleton Roman Catholic Separate School Board, the number of shares held in the corporation by Roman Catholics, less the number of shares held in the corporation by French-speaking persons who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of The Ottawa-Carleton French-language School Board, bears to the total number of shares of the corporation issued and outstanding; and

(5) Dès que le commissaire à l'évaluation reçoit l'avis de la personne morale ou de la société en nom collectif, il inscrit la personne morale ou la société en nom collectif au prochain rôle d'évaluation qui doit être rendu, en indiquant séparément le soutien scolaire relatif à son évaluation qui est accordé à chaque organisation scolaire désignée dans l'avis.

Obligation du commissaire à l'évaluation

(6) Le commissaire à l'évaluation, aux fins des écoles publiques, inscrit et évalue séparément les évaluations des personnes morales ou des sociétés en nom collectif qui ne sont pas désignées dans l'avis.

Idem

(7) Dès que le commissaire à l'évaluation reçoit l'avis de la personne morale ou de la société en nom collectif, il envoie une copie de l'avis au secrétaire de la municipalité de secteur où se trouvent les biens-fonds visés dans l'avis.

Copie de l'avis au secrétaire

(8) Dès que le secrétaire reçoit l'avis du commissaire à l'évaluation, il inscrit la personne morale ou la société en nom collectif au rôle du percepteur, en indiquant séparément le soutien scolaire relatif à son évaluation qui est accordé à chaque organisation scolaire désignée dans l'avis.

Obligation du secrétaire

(9) Le secrétaire inscrit et indique séparément comme étant évaluées aux fins des écoles publiques les évaluations des personnes morales ou des sociétés en nom collectif qui ne sont pas désignées dans l'avis.

Idem

(10) Les fractions de l'évaluation d'une personne morale qui sont imposées et évaluées à d'autres fins que celles des écoles publiques ne doivent pas représenter une proportion de l'évaluation totale de la personne morale qui soit supérieure :

Rapport—personnes morales

- a) dans le cas de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les francophones catholiques et le nombre total d'actions de la personne morale émises et en circulation;
- b) dans le cas du Conseil des écoles séparées catholiques d'Ottawa ou du Conseil des écoles séparées catholiques de Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les catholiques, moins le nombre d'actions détenues dans la personne morale par les francophones catholiques à l'égard d'une évaluation au sujet de laquelle est donné un avis de soutien à la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, et le nombre total d'actions de la personne morale émises et en circulation;

- (c) in the case of the public sector of The Ottawa-Carleton French-language School Board, the number of shares held in the corporation by French-speaking persons, less the number of shares held in the corporation by French-speaking persons who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of The Ottawa-Carleton French-language School Board, bears to the total number of shares of the corporation issued and outstanding.

How
partnership's
proportion
settled

(11) The portions of an assessment of a partnership that are rated and assessed other than for public school purposes shall not bear a greater proportion to the whole assessment of the partnership than,

- (a) in the case of the Roman Catholic sector of The Ottawa-Carleton French-language School Board, the interest of partners who are French-speaking persons and who are Roman Catholics in the assets giving rise to the assessment, bears to the whole interest of the partnership in the assets giving rise to the assessment;
- (b) in the case of The Ottawa Roman Catholic Separate School Board or The Carleton Roman Catholic Separate School Board, the interest of partners who are Roman Catholics in the assets giving rise to the assessment, less the interest of partners who are French-speaking persons and who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of The Ottawa-Carleton French-language School Board, bears to the whole interest of the partnership in the assets giving rise to the assessment; and
- (c) in the case of the public sector of The Ottawa-Carleton French-language School Board, the interest of partners who are French-speaking persons in the assets giving rise to the assessment, less the interest of partners who are French-speaking persons and who are Roman Catholics in respect of an assessment for which notice is given directing support to the Roman Catholic sector of The Ottawa-Carleton French-language School Board, bears to the whole interest of the partnership in the assets giving rise to the assessment.

- c) dans le cas de la section publique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les francophones, moins le nombre d'actions détenues dans la personne morale par les francophones catholiques à l'égard d'une évaluation au sujet de laquelle est donné un avis de soutien à la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, et le nombre total d'actions de la personne morale émises et en circulation.

(11) Les fractions de l'évaluation d'une société en nom collectif qui sont imposées et évaluées à d'autres fins que celles des écoles publiques ne doivent pas représenter une proportion de l'évaluation totale de la société en nom collectif qui soit supérieure :

Rapport—
sociétés en
nom collectif

- a) dans le cas de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre les parts détenues par les associés francophones et catholiques dans l'actif faisant l'objet de l'évaluation et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation;
- b) dans le cas du Conseil des écoles séparées catholiques d'Ottawa ou du Conseil des écoles séparées catholiques de Carleton, au rapport existant entre les parts détenues par les associés catholiques dans l'actif faisant l'objet de l'évaluation, moins les parts des associés francophones et catholiques à l'égard d'une évaluation au sujet de laquelle est donné un avis de soutien à la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation;
- c) dans le cas de la section publique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre les parts détenues par les associés francophones dans l'actif faisant l'objet de l'évaluation, moins les parts des associés francophones et catholiques à l'égard d'une évaluation au sujet de laquelle est donné un avis de soutien à la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation.

Notices:
effect, filing
and search
R.S.O. 1980,
c. 129

(12) Subsections 126 (6), (6a) and (7) of the *Education Act* apply with necessary modifications to notices under this section.

Secondary
school
purposes

(13) This section applies in the same manner for secondary school purposes as for elementary school purposes.

2. The said Act is amended by adding thereto the following section:

Definitions

18a.—(1) In this section,

“public corporation” means,

R.S.O. 1980,
c. 466

(a) a body corporate that is, by reason of its shares, a reporting issuer within the meaning of the *Securities Act* or that has, by reason of its shares, a status comparable to a reporting issuer under the law of any other jurisdiction,

(b) a body corporate that issues shares that are traded on a market if the prices at which they are traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation, or

(c) subject to subsection (2), a body corporate that is, within the meaning of subsections 1 (1) and (2), clause 1 (3) (a) and subsections 1 (4), (5) and (6) of the *Securities Act*, controlled by or is an affiliate or subsidiary of a body corporate or two or more bodies corporate described in clause (a) or (b); (“société ouverte”)

R.S.O. 1980,
c. 129

“residential and farm assessment” means residential and farm assessment as defined in clause 220 (b) of the *Education Act*, but for assessment in the year 1990 for taxation in the year 1991 and for later years, does not include the assessment of real property of public corporations. (“évaluation résidentielle et agricole”)

Percentage of
votes

(2) For the purposes of this section, the expression “more than 50 per cent of the votes” in clause 1 (3) (a) of the *Securities Act* shall be deemed to read “50 per cent or more of the votes”.

(12) Les paragraphes 126 (6), (6a) et (7) de la *Loi sur l'éducation* s'appliquent, avec les adaptations nécessaires, aux avis visés par le présent article.

Avis : validité, classement et recherche
L.R.O. 1980, chap. 129

(13) Le présent article s'applique de la même façon aux fins des écoles secondaires qu'à celles des écoles élémentaires.

Fins des écoles secondaires

2 La Loi est modifiée par l'adjonction de l'article suivant :

18a (1) Les définitions qui suivent s'appliquent au présent article.

Définitions

«évaluation résidentielle et agricole» S'entend d'une évaluation résidentielle et agricole au sens de l'article 220 de la *Loi sur l'éducation*, à l'exclusion toutefois de l'évaluation des biens immeubles des sociétés ouvertes pour l'évaluation au cours de l'année 1990 aux fins d'imposition au cours de l'année 1991 et pour les années subséquentes. («residential and farm assessment»)

L.R.O. 1980, chap. 129

«société ouverte» S'entend, selon le cas :

- a) d'une personne morale qui est, en raison de ses actions, un émetteur assujéti au sens de la *Loi sur les valeurs mobilières* ou qui a, en raison de ses actions, un statut comparable à celui d'un émetteur assujéti aux termes de la loi de toute autre autorité législative;
- b) d'une personne morale qui émet des actions faisant l'objet d'opérations sur un marché si les cours auxquels ces opérations sont effectuées sur ce marché sont publiés régulièrement dans des journaux ou des revues d'affaires ou de finance véritables, diffusés largement et régulièrement à titre onéreux;
- c) sous réserve du paragraphe (2), d'une personne morale qui est sous le contrôle ou qui est une filiale d'une ou de plusieurs personnes morales du type décrit à l'alinéa a) ou b), ou qui est membre du même groupe que la ou les personnes morales en question, au sens des paragraphes 1 (1) et (2), de l'alinéa (3) a) et des paragraphes (4), (5) et (6) de la *Loi sur les valeurs mobilières*. («public corporation»)

L.R.O. 1980, chap. 466

(2) Aux fins du présent article, l'expression «plus de 50 pour cent des voix» figurant à l'alinéa 1 (3) a) de la *Loi sur les valeurs mobilières* est réputée signifier «50 pour cent des voix ou plus».

Pourcentage des voix
L.R.O. 1980, chap. 466

Proportion of
assessment
for school
purposes

(3) An assessment of a public corporation in an area municipality shall be rated and assessed for the purposes of separate schools, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board in the same proportions to the total assessment of the public corporation in the area municipality as the residential and farm assessment rated and assessed for the purposes of separate schools, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board, respectively, in the area municipality bears to the total residential and farm assessment in the area municipality.

Duty of
assessment
commissioner

(4) The assessment commissioner shall enter the public corporation on the assessment roll to be next returned as a separate school supporter or a supporter of the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board with respect to the proportions of its assessment in the area municipality determined by subsection (3) and the remainder of the assessment of the public corporation shall be separately entered and assessed for public school purposes.

Supple-
mentary or
omitted
assessments
R.S.O. 1980,
c. 31

(5) An assessment of a public corporation in the area municipality made under section 32 or 33 of the *Assessment Act* shall be rated and assessed for public and separate school purposes in the manner set out in subsections (3) and (4).

Regulations

(6) The Lieutenant Governor in Council may make regulations adjusting the proportions of assessment rated and assessed for each school system in each area municipality in each year for a period of up to six years commencing with the 1st day of January, 1990 and requiring the assessment commissioner to adjust the rolls accordingly.

Idem

(7) Despite subsections (3) and (4), the proportions of assessment rated and assessed for each school system in each year for which a regulation made under this section is applicable shall be those proportions determined in accordance with such regulations.

Commence-
ment

3. This Act comes into force on the 1st day of December, 1989.

Short title

4. The short title of this Act is the *Ottawa-Carleton French-Language School Board Amendment Act, 1989*.

(3) L'évaluation d'une société ouverte située dans une municipalité de secteur est imposée et évaluée aux fins des écoles séparées, de la section publique et de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton par rapport à l'évaluation totale de la société ouverte située dans la municipalité de secteur selon le même rapport que celui qui existe entre l'évaluation résidentielle et agricole imposée et évaluée aux fins des écoles séparées, de la section publique et de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, respectivement, dans la municipalité de secteur, et l'évaluation résidentielle et agricole totale dans la municipalité de secteur.

Fraction de l'évaluation attribuée aux fins scolaires

(4) Le commissaire à l'évaluation inscrit la société ouverte au prochain rôle d'évaluation qui doit être rendu à titre de contribuable des écoles séparées ou de contribuable de la section publique ou de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton relativement à la fraction de son évaluation dans la municipalité de secteur, établie aux termes du paragraphe (3). Le reste de l'évaluation de la société ouverte est inscrit et évalué séparément aux fins des écoles publiques.

Obligation du commissaire à l'évaluation

(5) L'évaluation d'une société ouverte dans la municipalité de secteur effectuée en vertu de l'article 32 ou 33 de la *Loi sur l'évaluation foncière* est imposée et évaluée aux fins des écoles publiques et séparées de la façon énoncée aux paragraphes (3) et (4).

Évaluations supplémentaires ou omises
L.R.O. 1980, chap. 31

(6) Le lieutenant-gouverneur en conseil peut, par règlement, rajuster les fractions de l'évaluation qui sont imposées et évaluées aux fins de chaque organisation scolaire, dans chaque municipalité de secteur, tous les ans, pour une période d'au plus six ans à compter du 1^{er} janvier 1990, et exiger du commissaire à l'évaluation qu'il rajuste les rôles en conséquence.

Règlements

(7) Malgré les paragraphes (3) et (4), les fractions de l'évaluation qui sont imposées et évaluées aux fins de chaque organisation scolaire tous les ans, auxquelles s'applique un règlement pris en application du présent article, correspondent aux fractions établies conformément à ce règlement.

Idem

3 La présente loi entre en vigueur le 1^{er} décembre 1989.

Entrée en vigueur

4 Le titre abrégé de la présente loi est *Loi de 1989 modifiant la Loi sur le Conseil scolaire de langue française d'Ottawa-Carleton*.

Titre abrégé

Bill 65

An Act to amend the Ottawa-Carleton French-Language School Board Act, 1988

The Hon. S. Conway
Minister of Education

1st Reading October 19th, 1989
2nd Reading November 8th, 1989
3rd Reading
Royal Assent

*(Reprinted as amended by the
Social Development Committee)*

Projet de loi 65

Loi portant modification de la Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton

L'honorable S. Conway
ministre de l'Éducation



1^{re} lecture 19 octobre 1989
2^e lecture 8 novembre 1989
3^e lecture
sanction royale

*(Réimprimé tel qu'il est modifié par le
Comité des affaires sociales)*

EXPLANATORY NOTES

SECTION 1. Removes references to urban separate schools in order to be consistent with the *Education Act*.

SECTION 2. Section 18 of the Act is amended to permit partnerships to designate portions of their school support to separate schools or to the public sector or to the Roman Catholic sector of The Ottawa-Carleton French-language School Board, by notice to the assessment commissioner.

Subsections 18 (10) and (11) set upper limits on the proportions of an assessment that may be directed to a school system other than a public board.

SECTION 3. Section 18a defines public corporations and requires that their assessment in each area municipality be divided among the school systems in proportion to the support that each such system enjoys from the residential and farm assessment in that area municipality.

Subsection 18a (6) permits the Lieutenant Governor in Council to make regulations adjusting the proportions of assessment rated and assessed for each school system in each area municipality for a period of up to six years, commencing with the 1st day of January, 1990.

NOTES EXPLICATIVES

ARTICLE 1 L'article 1 supprime la mention des écoles séparées urbaines afin d'assurer la conformité avec la *Loi sur l'éducation*.

ARTICLE 2 L'article 18 de la Loi est modifié en vue de permettre aux sociétés en nom collectif de désigner les fractions de leur soutien scolaire qu'elles souhaitent accorder aux écoles séparées, ou à la section publique ou à la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au moyen d'un avis envoyé au commissaire à l'évaluation.

Les paragraphes 18 (10) et (11) fixent les plafonds auxquels est assujettie la fraction d'une évaluation qui peut être accordée à une organisation scolaire autre qu'un conseil d'écoles publiques.

ARTICLE 3 L'article 18a définit le terme «société ouverte» et exige que l'évaluation des sociétés ouvertes dans chaque municipalité de secteur soit répartie entre les organisations scolaires en proportion du soutien provenant de l'évaluation résidentielle et agricole dans cette municipalité de secteur, dont bénéficie chaque organisation scolaire.

Le paragraphe 18a (6) autorise le lieutenant-gouverneur en conseil à rajuster, par règlement, les fractions de l'évaluation imposées et évaluées aux fins de chaque organisation scolaire, dans chaque municipalité de secteur, pour une période d'au plus six ans, à compter du 1^{er} janvier 1990.

Bill 65

1989

**An Act to amend the
Ottawa-Carleton
French-Language School Board Act, 1988**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:



1. Subsection 5 (2) of the *Ottawa-Carleton French-Language School Board Act, 1988*, being chapter 47, is amended by,

(a) striking out “an urban” in the fourth line and inserting in lieu thereof “one”; and

(b) striking out “urban” in the sixth line.



2. Section 18 of the said Act is repealed and the following substituted therefor:

Definition

R.S.O. 1980,
c. 31

18.—(1) In this section and section 18a, “assessment”, in respect of a corporation or partnership, means the assessment under the *Assessment Act* of land of which the corporation or partnership is either the owner and occupant, or not being the owner, is the tenant, occupant or actual possessor, and includes the business or other assessments of the corporation or partnership under that Act. (“évaluation”)

Idem

R.S.O. 1980,
c. 370

(2) In this section, “partnership” means partnership within the meaning of the *Partnerships Act*. (“société en nom collectif”)

Application

(3) This section does not apply to a public corporation within the meaning of section 18a.

Projet de loi 65

1989

**Loi portant modification de la Loi de 1988 sur le
Conseil scolaire de langue française
d'Ottawa-Carleton**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :



1 Le paragraphe 5 (2) de la *Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton*, qui constitue le chapitre 47, est modifié par :

- a) substitution, aux mots «zone urbaine» à la quatrième ligne, des mots «seule zone»;
- b) suppression du mot «urbaines» à la sixième ligne.



2 L'article 18 de la Loi est abrogé et remplacé par ce qui suit :

18 (1) Dans le présent article et à l'article 18a, «évaluation», en ce qui concerne une personne morale ou une société en nom collectif, s'entend de l'évaluation, prévue par la *Loi sur l'évaluation foncière*, des biens-fonds dont la personne morale ou la société en nom collectif est le propriétaire et l'occupant ou, si elle n'en est pas le propriétaire, dont elle est le locataire, l'occupant ou le possesseur de fait, et s'entend en outre des évaluations commerciales ou autres de la personne morale ou de la société en nom collectif effectuées en vertu de cette loi. («assessment»)

Définition

L.R.O. 1980,
chap. 31

(2) Dans le présent article, «société en nom collectif» s'entend d'une société en nom collectif au sens de la *Loi sur les sociétés en nom collectif*. («partnership»)

Idem

L.R.O. 1980,
chap. 370

(3) Le présent article ne s'applique pas à une société ouverte au sens de l'article 18a.

Champ
d'application

School support, right of corporation or partnership
R.S.O. 1980, c. 31

(4) Subject to subsections (10) and (11), a corporation or partnership by notice to the assessment commissioner in a form prescribed under the *Assessment Act* may require the whole or any part of its assessment to be entered, rated and assessed for the purposes of separate schools or the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board, or any combination of them.

Duty of assessment commissioner

(5) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall enter the corporation or partnership on the assessment roll to be next returned with the school support with respect to its assessment for each school system designated in the notice entered separately.

Idem

(6) The assessment commissioner shall separately enter and assess for public school purposes any assessment of the corporation or partnership not designated in the notice.

Copy of notice to clerk

(7) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall forward a copy of the notice to the clerk of the area municipality in which the land referred to in the notice is situate.

Duty of clerk

(8) Upon receipt of the notice from the assessment commissioner, the clerk shall enter the corporation or partnership in the collector's roll with the school support with respect to its assessment for each school system designated in the notice entered separately.

Idem

(9) The clerk shall separately enter and show as assessed for public school purposes any assessment of the corporation or partnership not designated in the notice.

How corporation's proportion settled

(10) The portions of an assessment of a corporation that are rated and assessed other than for public school purposes shall not bear a greater proportion to the whole assessment of the corporation than,

- (a) in the case of the Roman Catholic sector of The Ottawa-Carleton French-language School Board, the number of shares held in the corporation by supporters of the Roman Catholic sector bears to the total number of shares of the corporation issued and outstanding;

(4) Sous réserve des paragraphes (10) et (11), une personne morale ou une société en nom collectif peut, au moyen d'un avis rédigé selon la formule prescrite par la *Loi sur l'évaluation foncière* et envoyé au commissaire à l'évaluation, demander que la totalité ou une partie de son évaluation soit inscrite, imposée et évaluée aux fins des écoles séparées, ou aux fins de la section publique ou de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, ou d'une combinaison de celles-ci.

Droit des personnes morales ou des sociétés en nom collectif en matière de soutien scolaire
L.R.O. 1980, chap. 31

(5) Dès que le commissaire à l'évaluation reçoit l'avis de la personne morale ou de la société en nom collectif, il inscrit la personne morale ou la société en nom collectif au prochain rôle d'évaluation qui doit être rendu, en indiquant séparément le soutien scolaire relatif à son évaluation qui est accordé à chaque organisation scolaire désignée dans l'avis.

Obligation du commissaire à l'évaluation

(6) Le commissaire à l'évaluation, aux fins des écoles publiques, inscrit et évalue séparément les évaluations des personnes morales ou des sociétés en nom collectif qui ne sont pas désignées dans l'avis.

Idem

(7) Dès que le commissaire à l'évaluation reçoit l'avis de la personne morale ou de la société en nom collectif, il envoie une copie de l'avis au secrétaire de la municipalité de secteur où se trouvent les biens-fonds visés dans l'avis.

Copie de l'avis au secrétaire

(8) Dès que le secrétaire reçoit l'avis du commissaire à l'évaluation, il inscrit la personne morale ou la société en nom collectif au rôle du percepteur, en indiquant séparément le soutien scolaire relatif à son évaluation qui est accordé à chaque organisation scolaire désignée dans l'avis.

Obligation du secrétaire

(9) Le secrétaire inscrit et indique séparément comme étant évaluées aux fins des écoles publiques les évaluations des personnes morales ou des sociétés en nom collectif qui ne sont pas désignées dans l'avis.

Idem

(10) Les fractions de l'évaluation d'une personne morale qui sont imposées et évaluées à d'autres fins que celles des écoles publiques ne doivent pas représenter une proportion de l'évaluation totale de la personne morale qui soit supérieure :

Rapport—personnes morales

- a) dans le cas de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les contribuables de la section catholique et le nombre total d'actions de la personne morale émises et en circulation;

- (b) in the case of The Ottawa Roman Catholic Separate School Board or The Carleton Roman Catholic Separate School Board, the number of shares held in the corporation by separate school supporters who are not supporters of the Roman Catholic sector bears to the total number of shares of the corporation issued and outstanding; and
- (c) in the case of the public sector of The Ottawa-Carleton French-language School Board, the number of shares held in the corporation by supporters of the public sector bears to the total number of shares of the corporation issued and outstanding.

How
partnership's
proportion
settled

(11) The portions of an assessment of a partnership that are rated and assessed other than for public school purposes shall not bear a greater proportion to the whole assessment of the partnership than,

- (a) in the case of the Roman Catholic sector of The Ottawa-Carleton French-language School Board, the interest of partners who are supporters of the Roman Catholic sector in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment;
- (b) in the case of The Ottawa Roman Catholic Separate School Board or The Carleton Roman Catholic Separate School Board, the interest of partners who are separate school supporters who are not supporters of the Roman Catholic sector in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment; and
- (c) in the case of the public sector of The Ottawa-Carleton French-language School Board, the interest of partners who are supporters of the public sector in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment.

- b) dans le cas du Conseil des écoles séparées catholiques d'Ottawa ou du Conseil des écoles séparées catholiques de Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les contribuables des écoles séparées qui ne sont pas des contribuables de la section catholique, et le nombre total d'actions de la personne morale émises et en circulation;
- c) dans le cas de la section publique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les contribuables de la section publique, et le nombre total d'actions de la personne morale émises et en circulation.

(11) Les fractions de l'évaluation d'une société en nom collectif qui sont imposées et évaluées à d'autres fins que celles des écoles publiques ne doivent pas représenter une proportion de l'évaluation totale de la société en nom collectif qui soit supérieure :

Rapport—
sociétés en
nom collectif

- a) dans le cas de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre les parts détenues par les associés qui sont des contribuables de la section catholique dans l'actif faisant l'objet de l'évaluation et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation;
- b) dans le cas du Conseil des écoles séparées catholiques d'Ottawa ou du Conseil des écoles séparées catholiques de Carleton, au rapport existant entre les parts détenues par les associés qui sont des contribuables des écoles séparées, mais qui ne sont pas des contribuables de la section catholique dans l'actif faisant l'objet de l'évaluation, et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation;
- c) dans le cas de la section publique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre les parts détenues par les associés qui sont des contribuables de la section publique dans l'actif faisant l'objet de l'évaluation, et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation.

Notices:
effect, filing
and search
R.S.O. 1980,
c. 129

(12) Subsections 126 (6), (6a) and (7) of the *Education Act* apply with necessary modifications to notices under this section.

Secondary
school
purposes

(13) This section applies in the same manner for secondary school purposes as for elementary school purposes.

3. The said Act is amended by adding thereto the following section:

Definitions

18a.—(1) In this section,

“public corporation” means,

R.S.O. 1980,
c. 466

(a) a body corporate that is, by reason of its shares, a reporting issuer within the meaning of the *Securities Act* or that has, by reason of its shares, a status comparable to a reporting issuer under the law of any other jurisdiction,

(b) a body corporate that issues shares that are traded on any market if the prices at which they are traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation, or

(c) subject to subsection (2), a body corporate that is, within the meaning of subsections 1 (1) and (2), clause 1 (3) (a) and subsections 1 (4), (5) and (6) of the *Securities Act*, controlled by or is a subsidiary of a body corporate or two or more bodies corporate described in clause (a) or (b); (“société ouverte”)

R.S.O. 1980,
c. 129

“residential and farm assessment” means residential and farm assessment as defined in section 220 of the *Education Act*, but for assessment in the year 1990 for taxation in the year 1991 and for later years, does not include the assessment of real property of public corporations. (“évaluation résidentielle et agricole”)

Percentage of
votes

(2) For the purposes of this section, the expression “more than 50 per cent of the votes” in clause 1 (3) (a) of the *Securities Act* shall be deemed to read “50 per cent or more of the votes”.

(12) Les paragraphes 126 (6), (6a) et (7) de la *Loi sur l'éducation* s'appliquent, avec les adaptations nécessaires, aux avis visés par le présent article.

Avis : validité, classement et recherche
L.R.O. 1980, chap. 129

(13) Le présent article s'applique de la même façon aux fins des écoles secondaires qu'à celles des écoles élémentaires.

Fins des écoles secondaires

3 La Loi est modifiée par adjonction de l'article suivant :

18a (1) Les définitions qui suivent s'appliquent au présent article. Définitions

«évaluation résidentielle et agricole» S'entend d'une évaluation résidentielle et agricole au sens de l'article 220 de la *Loi sur l'éducation*, à l'exclusion toutefois de l'évaluation des biens immeubles des sociétés ouvertes pour l'évaluation au cours de l'année 1990 aux fins d'imposition au cours de l'année 1991 et pour les années subséquentes. («residential and farm assessment»)

L.R.O. 1980, chap. 129

«société ouverte» S'entend, selon le cas :

- a) d'une personne morale qui est, en raison de ses actions, un émetteur assujéti au sens de la *Loi sur les valeurs mobilières* ou qui a, en raison de ses actions, un statut comparable à celui d'un émetteur assujéti aux termes de la loi de toute autre autorité législative;
- b) d'une personne morale qui émet des actions faisant l'objet d'opérations sur n'importe quel marché si les cours auxquels ces opérations sont effectuées sur ce marché sont publiés régulièrement dans des journaux ou des revues d'affaires ou de finance véritables, diffusés largement et régulièrement à titre onéreux;
- c) sous réserve du paragraphe (2), d'une personne morale qui est sous le contrôle ou qui est une filiale d'une ou de plusieurs personnes morales du type décrit à l'alinéa a) ou b), au sens des paragraphes 1 (1) et (2), de l'alinéa (3) a) et des paragraphes (4), (5) et (6) de la *Loi sur les valeurs mobilières*. («public corporation»)

L.R.O. 1980, chap. 466

(2) Aux fins du présent article, l'expression «plus de 50 pour cent des voix» figurant à l'alinéa 1 (3) a) de la *Loi sur les valeurs mobilières* est réputée signifier «50 pour cent des voix ou plus».

Pourcentage des voix

Proportion of
assessment
for school
purposes

(3) An assessment of a public corporation in an area municipality shall be rated and assessed for the purposes of separate schools, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board in the same proportions to the total assessment of the public corporation in the area municipality as the residential and farm assessment rated and assessed for the purposes of separate schools, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board, respectively, in the area municipality bears to the total residential and farm assessment in the area municipality.

Duty of
assessment
commissioner

(4) The assessment commissioner shall enter the public corporation on the assessment roll to be next returned as a separate school supporter or a supporter of the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board with respect to the proportions of its assessment in the area municipality determined by subsection (3) and the remainder of the assessment of the public corporation shall be separately entered and assessed for public school purposes.

Supple-
mentary or
omitted
assessments
R.S.O. 1980,
c. 31

(5) An assessment of a public corporation in the area municipality made under section 32 or 33 of the *Assessment Act* shall be rated and assessed for public and separate school purposes in the manner set out in subsections (3) and (4).

Regulations

(6) The Lieutenant Governor in Council may make regulations adjusting the proportions of assessment rated and assessed for each school system in each area municipality in each year for a period of up to six years commencing with the 1st day of January, 1990 and requiring the assessment commissioner to adjust the rolls accordingly.

Idem

(7) Despite subsections (3) and (4), the proportions of assessment rated and assessed for each school system in each year for which a regulation made under this section is applicable shall be those proportions determined in accordance with such regulation.

Commence-
ment

4. This Act shall be deemed to have come into force on the 1st day of December, 1989.

Short title

5. The short title of this Act is the *Ottawa-Carleton French-Language School Board Amendment Act, 1989*.

(3) L'évaluation d'une société ouverte située dans une municipalité de secteur est imposée et évaluée aux fins des écoles séparées, de la section publique et de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton par rapport à l'évaluation totale de la société ouverte située dans la municipalité de secteur selon le même rapport que celui qui existe entre l'évaluation résidentielle et agricole imposée et évaluée aux fins des écoles séparées, de la section publique et de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, respectivement, dans la municipalité de secteur, et l'évaluation résidentielle et agricole totale dans la municipalité de secteur.

Fraction de l'évaluation attribuée aux fins scolaires

(4) Le commissaire à l'évaluation inscrit la société ouverte au prochain rôle d'évaluation qui doit être rendu à titre de contribuable des écoles séparées ou de contribuable de la section publique ou de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton relativement à la fraction de son évaluation dans la municipalité de secteur, établie aux termes du paragraphe (3). Le reste de l'évaluation de la société ouverte est inscrit et évalué séparément aux fins des écoles publiques.

Obligation du commissaire à l'évaluation

(5) L'évaluation d'une société ouverte dans la municipalité de secteur effectuée en vertu de l'article 32 ou 33 de la *Loi sur l'évaluation foncière* est imposée et évaluée aux fins des écoles publiques et séparées de la façon énoncée aux paragraphes (3) et (4).

Évaluations supplémentaires ou omises
L.R.O. 1980, chap. 31

(6) Le lieutenant-gouverneur en conseil peut, par règlement, rajuster les fractions de l'évaluation qui sont imposées et évaluées aux fins de chaque organisation scolaire, dans chaque municipalité de secteur, tous les ans, pour une période d'au plus six ans à compter du 1^{er} janvier 1990, et exiger du commissaire à l'évaluation qu'il rajuste les rôles en conséquence.

Règlements

(7) Malgré les paragraphes (3) et (4), les fractions de l'évaluation qui sont imposées et évaluées aux fins de chaque organisation scolaire tous les ans, auxquelles s'applique un règlement pris en application du présent article, correspondent aux fractions établies conformément à ce règlement.

Idem

4 La présente loi est réputée être entrée en vigueur le 1^{er} décembre 1989.

Entrée en vigueur

5 Le titre abrégé de la présente loi est *Loi de 1989 modifiant la Loi sur le Conseil scolaire de langue française d'Ottawa-Carleton*.

Titre abrégé

Bill 65

2ND SESSION, 34TH LEGISLATURE, ONTARIO
38 ELIZABETH II, 1989

Bill 65

(Chapter 66
Statutes of Ontario, 1989)

An Act to amend the
Ottawa-Carleton
French-Language
School Board
Act, 1988

The Hon. S. Conway
Minister of Education

Projet de loi 65

2^e SESSION, 34^e LÉGISLATURE, ONTARIO
38 ELIZABETH II, 1989

Projet de loi 65

(Chapitre 66
Lois de l'Ontario de 1989)

Loi portant modification
de la Loi de 1988 sur le
Conseil scolaire de
langue française
d'Ottawa-Carleton

L'honorable S. Conway
ministre de l'Éducation



1st Reading	October 19th, 1989
2nd Reading	November 8th, 1989
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Bill 65

1989

**An Act to amend the
Ottawa-Carleton
French-Language School Board Act, 1988**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 5 (2) of the *Ottawa-Carleton French-Language School Board Act, 1988*, being chapter 47, is amended by,

- (a) striking out “an urban” in the fourth line and inserting in lieu thereof “one”; and
- (b) striking out “urban” in the sixth line.

2. Section 18 of the said Act is repealed and the following substituted therefor:

Definition

R.S.O. 1980,
c. 31

18.—(1) In this section and section 18a, “assessment”, in respect of a corporation or partnership, means the assessment under the *Assessment Act* of land of which the corporation or partnership is either the owner and occupant, or not being the owner, is the tenant, occupant or actual possessor, and includes the business or other assessments of the corporation or partnership under that Act. (“évaluation”)

Idem

R.S.O. 1980,
c. 370

(2) In this section, “partnership” means partnership within the meaning of the *Partnerships Act*. (“société en nom collectif”)

Application

(3) This section does not apply to a public corporation within the meaning of section 18a.

Projet de loi 65**1989****Loi portant modification de la Loi de 1988 sur le
Conseil scolaire de langue française
d'Ottawa-Carleton**

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 Le paragraphe 5 (2) de la *Loi de 1988 sur le Conseil scolaire de langue française d'Ottawa-Carleton*, qui constitue le chapitre 47, est modifié par :

- a) substitution, aux mots «zone urbaine» à la quatrième ligne, des mots «seule zone»;
- b) suppression du mot «urbaines» à la sixième ligne.

2 L'article 18 de la Loi est abrogé et remplacé par ce qui suit :

18 (1) Dans le présent article et à l'article 18a, «évaluation», en ce qui concerne une personne morale ou une société en nom collectif, s'entend de l'évaluation, prévue par la *Loi sur l'évaluation foncière*, des biens-fonds dont la personne morale ou la société en nom collectif est le propriétaire et l'occupant ou, si elle n'en est pas le propriétaire, dont elle est le locataire, l'occupant ou le possesseur de fait, et s'entend en outre des évaluations commerciales ou autres de la personne morale ou de la société en nom collectif effectuées en vertu de cette loi. («assessment»)

Définition

L.R.O. 1980,
chap. 31

(2) Dans le présent article, «société en nom collectif» s'entend d'une société en nom collectif au sens de la *Loi sur les sociétés en nom collectif*. («partnership»)

Idem

L.R.O. 1980,
chap. 370

(3) Le présent article ne s'applique pas à une société ouverte au sens de l'article 18a.

Champ
d'application

School support, right of corporation or partnership
R.S.O. 1980, c. 31

(4) Subject to subsections (10) and (11), a corporation or partnership by notice to the assessment commissioner in a form prescribed under the *Assessment Act* may require the whole or any part of its assessment to be entered, rated and assessed for the purposes of separate schools or the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board, or any combination of them.

Duty of assessment commissioner

(5) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall enter the corporation or partnership on the assessment roll to be next returned with the school support with respect to its assessment for each school system designated in the notice entered separately.

Idem

(6) The assessment commissioner shall separately enter and assess for public school purposes any assessment of the corporation or partnership not designated in the notice.

Copy of notice to clerk

(7) The assessment commissioner, upon receipt of the notice from the corporation or partnership, shall forward a copy of the notice to the clerk of the area municipality in which the land referred to in the notice is situate.

Duty of clerk

(8) Upon receipt of the notice from the assessment commissioner, the clerk shall enter the corporation or partnership in the collector's roll with the school support with respect to its assessment for each school system designated in the notice entered separately.

Idem

(9) The clerk shall separately enter and show as assessed for public school purposes any assessment of the corporation or partnership not designated in the notice.

How corporation's proportion settled

(10) The portions of an assessment of a corporation that are rated and assessed other than for public school purposes shall not bear a greater proportion to the whole assessment of the corporation than,

- (a) in the case of the Roman Catholic sector of The Ottawa-Carleton French-language School Board, the number of shares held in the corporation by supporters of the Roman Catholic sector bears to the total number of shares of the corporation issued and outstanding;

(4) Sous réserve des paragraphes (10) et (11), une personne morale ou une société en nom collectif peut, au moyen d'un avis rédigé selon la formule prescrite par la *Loi sur l'évaluation foncière* et envoyé au commissaire à l'évaluation, demander que la totalité ou une partie de son évaluation soit inscrite, imposée et évaluée aux fins des écoles séparées, ou aux fins de la section publique ou de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, ou d'une combinaison de celles-ci.

Droit des personnes morales ou des sociétés en nom collectif en matière de soutien scolaire
L.R.O. 1980, chap. 31

(5) Dès que le commissaire à l'évaluation reçoit l'avis de la personne morale ou de la société en nom collectif, il inscrit la personne morale ou la société en nom collectif au prochain rôle d'évaluation qui doit être rendu, en indiquant séparément le soutien scolaire relatif à son évaluation qui est accordé à chaque organisation scolaire désignée dans l'avis.

Obligation du commissaire à l'évaluation

(6) Le commissaire à l'évaluation, aux fins des écoles publiques, inscrit et évalue séparément les évaluations des personnes morales ou des sociétés en nom collectif qui ne sont pas désignées dans l'avis.

Idem

(7) Dès que le commissaire à l'évaluation reçoit l'avis de la personne morale ou de la société en nom collectif, il envoie une copie de l'avis au secrétaire de la municipalité de secteur où se trouvent les biens-fonds visés dans l'avis.

Copie de l'avis au secrétaire

(8) Dès que le secrétaire reçoit l'avis du commissaire à l'évaluation, il inscrit la personne morale ou la société en nom collectif au rôle du percepteur, en indiquant séparément le soutien scolaire relatif à son évaluation qui est accordé à chaque organisation scolaire désignée dans l'avis.

Obligation du secrétaire

(9) Le secrétaire inscrit et indique séparément comme étant évaluées aux fins des écoles publiques les évaluations des personnes morales ou des sociétés en nom collectif qui ne sont pas désignées dans l'avis.

Idem

(10) Les fractions de l'évaluation d'une personne morale qui sont imposées et évaluées à d'autres fins que celles des écoles publiques ne doivent pas représenter une proportion de l'évaluation totale de la personne morale qui soit supérieure :

Rapport—personnes morales

- a) dans le cas de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les contribuables de la section catholique et le nombre total d'actions de la personne morale émises et en circulation;

- (b) in the case of The Ottawa Roman Catholic Separate School Board or The Carleton Roman Catholic Separate School Board, the number of shares held in the corporation by separate school supporters who are not supporters of the Roman Catholic sector bears to the total number of shares of the corporation issued and outstanding; and
- (c) in the case of the public sector of The Ottawa-Carleton French-language School Board, the number of shares held in the corporation by supporters of the public sector bears to the total number of shares of the corporation issued and outstanding.

How
partnership's
proportion
settled

(11) The portions of an assessment of a partnership that are rated and assessed other than for public school purposes shall not bear a greater proportion to the whole assessment of the partnership than,

- (a) in the case of the Roman Catholic sector of The Ottawa-Carleton French-language School Board, the interest of partners who are supporters of the Roman Catholic sector in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment;
- (b) in the case of The Ottawa Roman Catholic Separate School Board or The Carleton Roman Catholic Separate School Board, the interest of partners who are separate school supporters who are not supporters of the Roman Catholic sector in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment; and
- (c) in the case of the public sector of The Ottawa-Carleton French-language School Board, the interest of partners who are supporters of the public sector in the assets giving rise to the assessment bears to the whole interest of the partnership in the assets giving rise to the assessment.

- b) dans le cas du Conseil des écoles séparées catholiques d'Ottawa ou du Conseil des écoles séparées catholiques de Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les contribuables des écoles séparées qui ne sont pas des contribuables de la section catholique, et le nombre total d'actions de la personne morale émises et en circulation;
- c) dans le cas de la section publique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre le nombre d'actions détenues dans la personne morale par les contribuables de la section publique, et le nombre total d'actions de la personne morale émises et en circulation.

(11) Les fractions de l'évaluation d'une société en nom collectif qui sont imposées et évaluées à d'autres fins que celles des écoles publiques ne doivent pas représenter une proportion de l'évaluation totale de la société en nom collectif qui soit supérieure :

Rapport—
sociétés en
nom collectif

- a) dans le cas de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre les parts détenues par les associés qui sont des contribuables de la section catholique dans l'actif faisant l'objet de l'évaluation et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation;
- b) dans le cas du Conseil des écoles séparées catholiques d'Ottawa ou du Conseil des écoles séparées catholiques de Carleton, au rapport existant entre les parts détenues par les associés qui sont des contribuables des écoles séparées, mais qui ne sont pas des contribuables de la section catholique dans l'actif faisant l'objet de l'évaluation, et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation;
- c) dans le cas de la section publique du Conseil scolaire de langue française d'Ottawa-Carleton, au rapport existant entre les parts détenues par les associés qui sont des contribuables de la section publique dans l'actif faisant l'objet de l'évaluation, et le total des parts de la société en nom collectif dans l'actif faisant l'objet de l'évaluation.

Notices:
effect, filing
and search
R.S.O. 1980,
c. 129

(12) Subsections 126 (6), (6a) and (7) of the *Education Act* apply with necessary modifications to notices under this section.

Secondary
school
purposes

(13) This section applies in the same manner for secondary school purposes as for elementary school purposes.

3. The said Act is amended by adding thereto the following section:

Definitions

18a.—(1) In this section,

“public corporation” means,

R.S.O. 1980,
c. 466

(a) a body corporate that is, by reason of its shares, a reporting issuer within the meaning of the *Securities Act* or that has, by reason of its shares, a status comparable to a reporting issuer under the law of any other jurisdiction,

(b) a body corporate that issues shares that are traded on any market if the prices at which they are traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation, or

(c) subject to subsection (2), a body corporate that is, within the meaning of subsections 1 (1) and (2), clause 1 (3) (a) and subsections 1 (4), (5) and (6) of the *Securities Act*, controlled by or is a subsidiary of a body corporate or two or more bodies corporate described in clause (a) or (b); (“société ouverte”)

R.S.O. 1980,
c. 129

“residential and farm assessment” means residential and farm assessment as defined in section 220 of the *Education Act*, but for assessment in the year 1990 for taxation in the year 1991 and for later years, does not include the assessment of real property of public corporations. (“évaluation résidentielle et agricole”)

Percentage of
votes

(2) For the purposes of this section, the expression “more than 50 per cent of the votes” in clause 1 (3) (a) of the *Securities Act* shall be deemed to read “50 per cent or more of the votes”.

(12) Les paragraphes 126 (6), (6a) et (7) de la *Loi sur l'éducation* s'appliquent, avec les adaptations nécessaires, aux avis visés par le présent article.

Avis : validité, classement et recherche
L.R.O. 1980, chap. 129

(13) Le présent article s'applique de la même façon aux fins des écoles secondaires qu'à celles des écoles élémentaires.

Fins des écoles secondaires

3 La Loi est modifiée par adjonction de l'article suivant :

18a (1) Les définitions qui suivent s'appliquent au présent article.

Définitions

«évaluation résidentielle et agricole» S'entend d'une évaluation résidentielle et agricole au sens de l'article 220 de la *Loi sur l'éducation*, à l'exclusion toutefois de l'évaluation des biens immeubles des sociétés ouvertes pour l'évaluation au cours de l'année 1990 aux fins d'imposition au cours de l'année 1991 et pour les années subséquentes. («residential and farm assessment»)

L.R.O. 1980, chap. 129

«société ouverte» S'entend, selon le cas :

- a) d'une personne morale qui est, en raison de ses actions, un émetteur assujéti au sens de la *Loi sur les valeurs mobilières* ou qui a, en raison de ses actions, un statut comparable à celui d'un émetteur assujéti aux termes de la loi de toute autre autorité législative;
- b) d'une personne morale qui émet des actions faisant l'objet d'opérations sur n'importe quel marché si les cours auxquels ces opérations sont effectuées sur ce marché sont publiés régulièrement dans des journaux ou des revues d'affaires ou de finance véritables, diffusés largement et régulièrement à titre onéreux;
- c) sous réserve du paragraphe (2), d'une personne morale qui est sous le contrôle ou qui est une filiale d'une ou de plusieurs personnes morales du type décrit à l'alinéa a) ou b), au sens des paragraphes 1 (1) et (2), de l'alinéa (3) a) et des paragraphes (4), (5) et (6) de la *Loi sur les valeurs mobilières*. («public corporation»)

L.R.O. 1980, chap. 466

(2) Aux fins du présent article, l'expression «plus de 50 pour cent des voix» figurant à l'alinéa 1 (3) a) de la *Loi sur les valeurs mobilières* est réputée signifier «50 pour cent des voix ou plus».

Pourcentage des voix

Proportion of
assessment
for school
purposes

(3) An assessment of a public corporation in an area municipality shall be rated and assessed for the purposes of separate schools, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board in the same proportions to the total assessment of the public corporation in the area municipality as the residential and farm assessment rated and assessed for the purposes of separate schools, the public sector and the Roman Catholic sector of The Ottawa-Carleton French-language School Board, respectively, in the area municipality bears to the total residential and farm assessment in the area municipality.

Duty of
assessment
commissioner

(4) The assessment commissioner shall enter the public corporation on the assessment roll to be next returned as a separate school supporter or a supporter of the public sector or the Roman Catholic sector of The Ottawa-Carleton French-language School Board with respect to the proportions of its assessment in the area municipality determined by subsection (3) and the remainder of the assessment of the public corporation shall be separately entered and assessed for public school purposes.

Supple-
mentary or
omitted
assessments
R.S.O. 1980,
c. 31

(5) An assessment of a public corporation in the area municipality made under section 32 or 33 of the *Assessment Act* shall be rated and assessed for public and separate school purposes in the manner set out in subsections (3) and (4).

Regulations

(6) The Lieutenant Governor in Council may make regulations adjusting the proportions of assessment rated and assessed for each school system in each area municipality in each year for a period of up to six years commencing with the 1st day of January, 1990 and requiring the assessment commissioner to adjust the rolls accordingly.

Idem

(7) Despite subsections (3) and (4), the proportions of assessment rated and assessed for each school system in each year for which a regulation made under this section is applicable shall be those proportions determined in accordance with such regulation.

Commence-
ment

4. This Act shall be deemed to have come into force on the 1st day of December, 1989.

Short title

5. The short title of this Act is the *Ottawa-Carleton French-Language School Board Amendment Act, 1989*.

(3) L'évaluation d'une société ouverte située dans une municipalité de secteur est imposée et évaluée aux fins des écoles séparées, de la section publique et de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton par rapport à l'évaluation totale de la société ouverte située dans la municipalité de secteur selon le même rapport que celui qui existe entre l'évaluation résidentielle et agricole imposée et évaluée aux fins des écoles séparées, de la section publique et de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton, respectivement, dans la municipalité de secteur, et l'évaluation résidentielle et agricole totale dans la municipalité de secteur.

Fraction de l'évaluation attribuée aux fins scolaires

(4) Le commissaire à l'évaluation inscrit la société ouverte au prochain rôle d'évaluation qui doit être rendu à titre de contribuable des écoles séparées ou de contribuable de la section publique ou de la section catholique du Conseil scolaire de langue française d'Ottawa-Carleton relativement à la fraction de son évaluation dans la municipalité de secteur, établie aux termes du paragraphe (3). Le reste de l'évaluation de la société ouverte est inscrit et évalué séparément aux fins des écoles publiques.

Obligation du commissaire à l'évaluation

(5) L'évaluation d'une société ouverte dans la municipalité de secteur effectuée en vertu de l'article 32 ou 33 de la *Loi sur l'évaluation foncière* est imposée et évaluée aux fins des écoles publiques et séparées de la façon énoncée aux paragraphes (3) et (4).

Évaluations supplémentaires ou omises
L.R.O. 1980, chap. 31

(6) Le lieutenant-gouverneur en conseil peut, par règlement, rajuster les fractions de l'évaluation qui sont imposées et évaluées aux fins de chaque organisation scolaire, dans chaque municipalité de secteur, tous les ans, pour une période d'au plus six ans à compter du 1^{er} janvier 1990, et exiger du commissaire à l'évaluation qu'il rajuste les rôles en conséquence.

Règlements

(7) Malgré les paragraphes (3) et (4), les fractions de l'évaluation qui sont imposées et évaluées aux fins de chaque organisation scolaire tous les ans, auxquelles s'applique un règlement pris en application du présent article, correspondent aux fractions établies conformément à ce règlement.

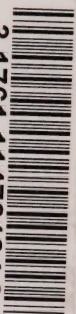
Idem

4 La présente loi est réputée être entrée en vigueur le 1^{er} décembre 1989.

Entrée en vigueur

5 Le titre abrégé de la présente loi est *Loi de 1989 modifiant la Loi sur le Conseil scolaire de langue française d'Ottawa-Carleton*.

Titre abrégé



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